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EAST INDIA.

COPIES

OF THE

SPECIAL REPORTS

OF THE

INDIAN LAW COMMISSIONERS.

[*Presented to Parliament in pursuance of the Act* 3 & 4 *Will.* IV. *c.* 85, *s.* 54.]

East India House,
6 April 1842.

JAMES C. MELVILL.

CX f. 4
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Ordered, by The House of Commons, *to be Printed,*
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CX.
8

CONTENTS.

— (A.) —

No. I.—Judicial System of the Madras Presidency; for dispensing with Futwas from Mahomedan Law Officers - p. 3
No. II.—(Parts 1. & 2.) Articles of War - - - - - - - - - - - - - pp. 19 & 82
No. III.—(Parts 1. & 2.) Military Courts of Requests - - - - - - - - - - - pp. 131 & 153
No. IV.—Enforcement of Fines, &c. - - - - - - - - - - - - - - p. 191
No. V.—Powers of a Master over his Slave - - - - - - - - - - - - - p. 209
No. VI.—Concerning the Oaths and Declarations of Native Witnesses - - - - - - - - p. 230
No. VII.—Suppression of Affrays concerning Indigo - - - - - - - - - - - p. 266

(True Extracts or Copies.)

Examiner's Office, East India House,
8 February 1841.

T. L. Peacock,
Examiner of India Correspondence.

— (B.) —

LIST of SPECIAL REPORTS from the INDIAN LAW COMMISSION.

No.	Page.	Date of Commissioners' Report.	SUBJECT.	When Recorded.	Remarks.	When Reported to Court.
I.	307	4 April 1840	Printing Report on Slavery - -	27 April 1840 (No. 8)	reported to Court -	- Des. No. 19 of 1840, dated 16 Nov.
II.	308	11 July —	- - Questions which occupy the immediate attention of the Commissioners.	3 Aug. 1840 (No. 2)	not yet reported.	
III.	314	— — 1837	- - Affrays concerning Indigo and pounding Cattle.	17 — 1840 (No. 10)	- ditto.	
IV.	321	14 Aug. 1840	Transportation for limited terms -	7 Sept. 1840 (No. 10)	reported to Court -	- Des. No. 19 of 1840, dated 16 Nov.
V.	323	2 — —	Madras Judicial System - -	5 Oct. 1840 (Nos. 37 & 38)	not yet reported.	
VI.	347	31 Oct. —	- - Question of rendering lands purchased under fictitious names liable to forfeiture, including lands of Native Officers, &c.	23 Nov. 1840 (Nos. 12 to 22)	- ditto.	
VII.	439	- — -	- - On the petitions of the East Indians and Armenians.	not recorded -	- - under consideration of Government; printed copy sent.	
		21 Feb. 1837	Stamp Act - - - -	6 Mar. 1837 (No. 20)	- - under consideration of Governor in the General Department; copy not sent.	
		20 July —	- - Modification of Sect. 3, Reg. XIII. 1832, Madras Code.	- - -	- - under consideration of Governor in the Legislative Department; copy not sent.	

East India House,
30 March 1841.

T. L. Peacock,
Examiner of India Correspondence.

LIST of SPECIAL [illegible] COMMISSION furnished during the Year 1841.

No.	Page.	Date of Commissioners' Report.	SUBJECT.	When Recorded.	Remarks.	When Reported to Court.
I.	470	15 Jan. 1841	Report on Slavery in India - -	15 Feb. 1841 (Nos. 1 to 3)	reported to Court -	- - Des. No. 3 of 1841, dated 8 Feb. Des. No. 8, of 1841, dated 10 May. Des. No. 19, of 1841, dated 6 Sept.
II.	516	22 May —	Examination of absent Witnesses -	14 June 1841 (Nos. 4 & 5)	- - Act VII. of 1841, passed; reported to Court.	- - Des. No. 17 of 1841, dated 16 Aug. paras. 14 to 17.
III.	533	10 July —	Madras Judicial System - -	29 Nov. 1841 (Nos. 1 to 3)	not yet reported.	
IV.	592	20 Nov. —	Slavery in the Straits Settlements -	6 Dec. 1841 (No. 11)	- ditto.	
V.	596	4 Dec. —	Special Appeals - - - -	20 Dec. 1841 (No. 22)	- - Act under consideration; not yet reported to Court.	
		21 Feb. 1837	Stamps - - - - - -	6 Mar. 1837 (No. 20.)	- - under consideration in the General Department; copy not sent.	
		20 July —	- - Modification of Sec. 3, Reg. XIII. 1832, Madras Code.	- - -	- - under consideration of the Legislative Department; copy not [illegible]	

East India House,
6 April 1842.

[illegible] Peacock,
Examiner of India Correspondence.

SPECIAL REPORTS

OF THE

INDIAN LAW COMMISSIONERS.

cx f. 4

— (A.) No. I. —

JUDICIAL SYSTEM OF THE MADRAS PRESIDENCY,

And Proposition for dispensing with the necessity of requiring Futwas from Mahomedan Law Officers.

No. I.
Judicial System of the Madras Presidency.

Legis. Cons.
3 June 1839.
No. 50.

(No. 18.)

From *J. P. Grant*, Esq. Officiating Secretary to the Indian Law Commission, to the Secretary to the Government of India, Legislative Department.

Sir,

I AM directed by the Indian Law Commissioners to acknowledge the receipt of your letter, dated the 4th of July 1836, enclosing several papers on the subject of certain proposed changes in the judicial system.

2. The first four paragraphs of your letter relate to proposed modifications in the judicial system under the Madras presidency. It appears that the government of Madras were required by the government of India to take into consideration a scheme of reform, involving the abolition of the provincial courts of appeal and circuit.

That government, after corresponding on the subject with their Sudder and Foujdarry Adawlut, communicated the opinions of the judges of those courts, and their own opinions on that subject, to the government of India. The papers thus received from Madras have been sent to the Law Commission, who are directed, after due consideration of the facts and arguments stated in them, to report their opinion as to whether it is expedient to adopt the contemplated changes in the tribunals of that presidency.

In those papers various changes are suggested by the judges as well as by the Honourable the Governor of Madras in Council, as means to effect the object which the Governor-general of India in Council had in view. But the Law Commission conceive that, while it was intended that their attention should be given to the whole subject, and all that has been advanced upon it, the measures recommended by the government of Madras are the changes to which your letter more particularly refers.

3. The Law Commission are further required, of course on the supposition of their being in favour of those changes, to state whether, in their opinion, the introduction of them ought to be immediate, or to await the enactment of the new code of procedure. And their consideration is especially called to the question, whether it is not expedient immediately to suspend the jurisdiction of the provincial courts, in so far as regards the receiving of fresh suits or appeals.

4. The Law Commission are strongly inclined to the opinion, that when the judicial establishments of the Madras presidency come under revision, in the course of the labours of this Commission, it will not be found advisable to maintain the provincial courts of appeal and circuit. But they are not prepared at the present stage of their proceedings to say what particular arrangements they may consider as the most advantageous for the performance of the duties which now belong to those tribunals.

5. What appears to them to be the greatest difficulty that will probably be met with in revising this part of the Madras system is to provide, if it be deemed necessary, when the provincial courts are taken away, that local supervision by higher officers than zillah judges, to which the Madras government attaches so much importance.

6. With great respect for the opinion of that government, the Law Commission

No. I.
Judicial System of the Madras Presidency.

mission can by no means approve of the measures which they recommend for this purpose.

7. The appointment of five officers, to be designated Commissioners of Revenue and Circuit, is proposed. These officers, besides being charged with the powers of supervision and control now vested in judges on circuit, and in the collective provincial court, are to be Commissioners under Regulation VIII. of 1822, of the Madras Code; they are to hear appeals from sentences passed by collectors under Regulation IX. of 1822; they are to exercise any portions of the functions of the Sudder Court which that court may think it proper to delegate to them; and lastly, they are to perform any other duties on which the executive government may at any time think fit to employ them.

8. The duty of the Commissioners under Regulation VIII. of 1822, is to conduct investigations, when deemed necessary by the government, into the conduct of public officers in any of the civil departments.

9. What gave occasion to the enactment of that Regulation was, as stated in its preamble, that certain rules which were before in force, prescribing a particular course of inquiry when charges, or information of corruption, embezzlement, or other high misdemeanors were brought against European public officers, had been found to be inconvenient in practice, and otherwise objectionable. It was therefore enacted (sect. 3), that in such cases it should rest with the Governor in Council to determine by what persons and in what way the invesgation should be made, in consideration of the circumstances of each case.

10. It is obvious that without an entire departure from the principle thus professed and acted on, wisely and beneficially, in the opinion of the Law Commission, and without a return to the course which was formerly tried and found not to answer, the conduct of such inquiries could not be made a part of the regular duties belonging to the office of the proposed new Commissioners. Supposing, then, this not to be done, the government no doubt might, in the exercise of their discretion, occasionally employ in that way the gentlemen holding the office of Commissioners. But the Law Commission cannot look on this as a consideration of any force in favour of instituting that office. Investigations of the kind in question are not very frequently requested; nor is the government, they believe, ever at a loss, when occasions for them arise, to find fit persons to conduct them. Even if the government, the law remaining as at present, were to make it a general rule to employ the Commissioners on such occasions, it is to be hoped that the occupation thus afforded them would commonly be very limited; while there is reason to apprehend that it would sometimes interfere prejudicially with the performance of their proper duties, if these should be of that importance which alone could justify the instituting of their office.

Besides, in the opinion of the Law Commission, such a general rule would not in itself be of advantage, but rather the reverse.

11. The appeal from sentences passed by collectors, under Regulation IX. of 1822, lies at present to the Board of Revenue, and with far greater propriety, as the Law Commission think, than it would to the proposed Commissioners. Under the provisions of that Regulation, official delinquencies, which it is not deemed advisable to make matters of prosecution in the regular criminal courts, are summarily inquired into and visited with correction, within moderate assigned limits, by the official superiors of the offenders. The appeal now in question is an appeal from what is done in this manner, and differs as much from an appeal in the regular course of the ordinary judicial administration by the courts, as the proceedings of the collector differ from a regular trial by one of those tribunals. If the authority appealed to, the Board of Revenue, do not decide in favour of the appellant, it is still open to him to seek for redress by bringing the matter before one of the regular courts, to be there inquired into; except, indeed, in cases where the government, on the representation of the revenue authorities, may think fit to appoint a special Commissioner to conduct the trial. To what extent the functions of the criminal courts ought to be performed by the heads of departments, where their subordinates are concerned, is an important and difficult question, into which the Law Commission do not at present think it necessary to enter.

But as long as the system established by this Regulation is at all upheld, the whole business ought in every case to be kept within the executive department of government, until the period arrives when it is made the subject of a regular judicial inquiry, either by the sueing of the accused for redress, or by the government's appointing a Commissioner.

In

In these remarks the Law Commission assume that it is not intended to place the proposed new officer generally as a part of the regular executive establishment between the collector and the Board of Revenue; but that possibly may be the intention of the Madras government; the proposed resignation of Commissioner of Revenue and Circuit seems to give colour to this supposition.

If it is so, then the Law Commission beg leave strongly to deprecate such a measure; that union of fiscal with judicial functions, which in some parts at least of India appears to be necessary, but which is, at best, a necessary evil, would thereby be, without the slightest necessity, made closer than it has ever yet been.

In the opinion of the Law Commission it would add a cumbrous link to a chain that is already quite long enough; it would lower the position of the collectors, damp their zeal, and paralyse their energies; it would impair the efficacy of the control exercised over the proceedings of that most important class of public officers by the Board of Revenue; it would not supply any other control that would be in the whole beneficial; it would multiply correspondence, and generate worse than useless controversy.

Besides, whether the Commissioners were generally interposed between the Board and the collectors or not, the duty of hearing these appeals would not be very congruous with the functions in the general system of judicature, which it is proposed to confer on the same Commissioners.

12. But it may be said, that though the appeal in the first instance from sentences passed by collectors, could not with advantage be made to lie to the new Commissioners, yet when government saw occasion to appoint a Commission for the purpose of making a regular judicial inquiry into an appeal case, the new Commissioner might be employed. On this the Law Commission would only observe, that the remarks which they have already submitted on the proposal to employ those officers as Commissioners under Regulation VIII. of 1822, appear to be also applicable to this mode of employing them, as far as is necessary to show that but very little advantage could be derived from it.

13. The Law Commission do not think that in any system of judicial tribunals which it may be deemed expedient to adopt, it can be advisable to have a class of functionaries to whom, as is recommended with regard to the proposed Commissioners, the highest court shall have power to delegate any part of their own functions which they may please; and this recommendation seems to them the more objectionable, because it is proposed that the same officers should not only be charged with the various duties already adverted to, but should further be liable to be employed in any other way the government of the presidency might at any time think fit, in any branch of the civil administration of the country. On this last suggestion, considered by itself, it may be sufficient to observe, that it would hardly be offered with especial regard to any class of officers adequately provided with appropriate duties.

14. Of the employment proposed for the Commissioners of Revenue and Circuit, the only part which the Law Commission have not in the foregoing remarks endeavoured to show to be either objectionable, or to hold out little prospect of advantage, is the duties of supervision and control (as distinguished from strictly judicial duties) now vested in the circuit judge and the Collective Circuit Court. These duties are described in Section 40 of Regulation IX., and sections 23 and 24 of Regulation X. of 1816, of the Madras Code. They are certainly not unimportant in themselves, and entrusted as they are at present to officers vested with other high functions of a kind with which they well consort, and from which those officers derive great importance in the eyes of the people, the discharge of them, as the Law Commission are inclined to believe, is on the whole attended with considerable benefit to the public; but the Law Commission doubt much whether they could be performed with the same advantage by the proposed Commissioners; and even were it certain that they could, it would not seem to the Law Commission to be advisable to set up so costly an apparatus for the purpose of doing this work.

15. At the same time the Law Commission agree with the Madras government in thinking that there would be difficulties in adopting at that presidency the system in operation at Bombay, of employing the judges of the Sudder Court to make circuits. The Madras territories are so extensive, that the Sudder judges could not, without inconvenience, periodically visit all parts of them.

16. The Madras government and Foujdarry Adawlut strongly urge the expediency of abolishing all reference to the Mahomedan law in the administration of

No. I.
Judicial System of the Madras Presidency.

criminal justice. This desirable object would be accomplished by the enactment of the criminal code now before the Supreme Government. In the meantime the Law Commission would not recommend that any such regulation as that of which a draft has been received from Madras, should be passed, or indeed that any change in the state of the substantive criminal law should be made, unless it were on some particular point urgently requiring alterations, for special reasons.

The Law Commission conceive, however, that the reference which the Regulations require to be made to the Mahomedan law officers might with advantage be dispensed with, at least in the Court of Foujdarry Adawlut, by an enactment, which should leave the substantive law just as it is. It has been so far dispensed with in Bengal, except in cases of murder; and the Law Commission imagine that the greater part of the existing criminal law being to be found in the Madras Code of Regulations, and the rest, with little or no exception, in recorded precedents, or in books which are readily accessible, the Madras judges would be competent to administer it without the aid of those officers.

Indeed the Law Commission are confident, that at least the judges of the Foujdarry Adawlut are so competent; and if they are, the Law Commission see no reason why this change should not, to the extent just stated, be immediately introduced. It would, they conceive, render Persian records of trials unnecessary in that court, and be attended with a considerable saving of time in the administration of criminal justice in the most important class of cases. If the measure could be extended to the courts of circuit, the advantages of it would of course be increased.

The Law Commission would not, however, recommend that any Act should be passed to carry this reform into effect in those courts, or even in the Foujdarry Adawlut, without consulting further the government of Madras.

17. The Madras government, though they are against the plan of sending judges of the Sudder Court on circuits, yet among the additional duties to be imposed on that court, on account of which they suggest an increase in the number of judges, mention the trial of crimes beyond the powers of session judges. From this it would seem to be intended, that for some crimes, in whatever part of the Madras territories they may be committed, no means of trial should be provided, except at Madras. But the Law Commission cannot believe that the Madras government really meditate such a state of things; they rather suppose that what is meant is, that the session judges should be required to refer their trials to the Foujdarry Adawlut for final decision, in some classes of cases in which such reference is not now made by the judges on circuit, whereby the duties of the Foujdarry Adawlut would of course be increased. The Law Commission thought it right to observe here, that the delay in the disposal of trials referred to the Foujdarry Adawlut has not, as they understand, been commonly so great as it appears to have been in the years 1831, 1832, and 1833.

18. Various other changes are suggested by the Foujdarry Adawlut and the Madras government. This will of course receive consideration from this Commission in revising that part of the judicial system to which they belong. None of them appear to the Law Commission to be such as it would be desirable immediately to adopt.

19. As the Law Commission are of opinion that it will ultimately be advisable to abolish the provincial courts of appeal, they have given their best consideration to the question, whether the jurisdiction of those courts should be immediately suspended, so far as regards the receiving of fresh suits or appeals.

Although it is probable that the introduction of the change of system, which shall be ultimately resolved on, might thus be in some degree expedited, they yet think it would be better on the whole to make no alteration in the existing jurisdictions while the future system is still to be formed; in other words, not to begin to make the change till it is determined what the change shall be.

It is certainly most proper that means should be taken to prevent the inconvenience which would be felt if an accumulation of arrears were allowed to take place while the business of the courts is in a state of transition from one tribunal to another; but the doing of this cannot be in the smallest degree facilitated by commencing the work at an earlier rather than at a later period. In no respect, except the probable gaining of time, would the course proposed be attended with advantage; and there are some positive objections to it, which appear to the Law Commission to be of moment. It may be assumed that the civil jurisdiction of the zillah courts will not ultimately be left as at present; it follows, that the

proposed

No. I.
Judicial System of the Madras Presidency.

proposed measure would not be a mere step in effecting the introduction of a new system of jurisdiction, but would in itself set up, for a short time, a jurisdiction different not only from that which now exists, but also from that which is to be hereafter established. No change of judicature can be advisable except for the attainment of some important advantage; change, considered merely as change, is in such matters an evil; if frequent, it is a great evil. Here we should have a change which, without any apparent necessity, would create a system of jurisdiction avowedly designed to endure but a very short time.

The Law Commission fear that in a greater or less degree it would tend to unsettle the minds of people, and cause dissatisfaction among them. The Law Commission fear, too, that an additional occasion for such dissatisfaction would be given in a way which would be much to be regretted; for by making the appeal lie at once from the zillah courts to the Sudder Adawlut in all cases now appealable to the provincial courts, before the mode of conducting appeals was thoroughly reformed, much inconvenience and hardship would probably be caused to suitors. These objections to the proposed measure would hold, even if it were certain that a system in the introduction of which some advantage in point of time would be derived from that measure, will ultimately be fixed upon. As that, however, can at present be regarded as at most only highly probable, these objections hold on this account with additional force.

Another objection, too, arises from the same circumstance. In matters of th is kind, a step once taken towards any object is in itself a reason, and is apt, even in the most honest minds, to be still more a motive for proceeding further in the same direction.

Whatever, therefore, the Law Commission may at present look upon as likely to be their ultimate conclusions respecting the judicial establishments of the Madras presidency, it is, in their opinion, unadvisable to adopt any important practical measure on the strength of their speculations, before that part of their labours by which those conclusions are yet to be arrived at, shall have been gone through.

20. The Law Commission will submit hereafter a full exposition of their opinions on the general subject of appeal, including the question of giving the highest appellate jurisdiction to single judges. In the meantime they respectfully recommend, that no change be made in the constitution of any of the sudder courts.

21. The original papers which accompanied your letter under reply, are herewith returned, copies of them having been kept for record in this office.

I have, &c.
(signed) *J. P. Grant*,
Officiating Secretary.

Indian Law Commission,
30 May 1837.

(No. 1042.)

From *Henry Chamier*, Chief Secretary to the Government of Madras, to *T. H. Maddock*, Esq. Officiating Secretary to the Government of India, dated *Fort St. George*, 30 October 1838.

Legis. Cons. 3 June 1839. No. 51.

Sir,

With reference to my letter of the 3d June 1836 (No. 489), I am directed by the Right honourable the Governor in Council to transmit to you, for submission to the Honourable the President in Council, the accompanying extract (para. 18) from a despatch from the Honourable the Court of Directors, of the 5th January last (No. 1), relative to the contemplated reforms in the judicial system under this presidency, together with a copy of the order recorded thereon by government under this date.

Judicial Dep.

I have, &c.
(signed) *Henry Chamier*,
Chief Secretary.

Judicial Department.

Legis. Cons. 3 June 1839. No. 52. Enclosure.

EXTRACT from a General LETTER from the Honourable the Court of Directors, dated 5th January 1838. (No. 1.)

18; also para. 39, Judicial Letter, 30 Sept. (No. 11), 1836, and 62, 16 May (No. 5), 1837. Judicial System: Correspondence with the Supreme Government relative to its reform, particularly referred to.

(Para. 18.) IT is apparent from the correspondence here referred to, that it would be desirable to abolish the provincial courts of appeal and circuit under your presidency, as well as in Bengal. Their abolition has accordingly been determined upon for the last seven years, but successive obstacles have arisen to prevent that resolution from being carried into effect.

The subject being under reference to the Governor-general in Council, we trust that, without further delay, such reform of that portion of your judicial establishments as may be requisite will now be adopted.

EXTRACT from the MINUTES of CONSULTATION, under date the 30th October 1838. (No. 1041.)

(Para. 12.) THE Supreme Government not having yet come to a decision on the important subject adverted to in this paragraph, their attention will be requested to the hope expressed by the Honourable Court therein, that no further delay will be allowed to occur in adopting such reform of that portion of the judicial establishment under this presidency as may be requisite.

(True extracts.)
(signed) *Hy. Chamier*,
Chief Secretary.

MINUTE by the Honourable *T. C. Robertson*, Esq. dated the 25th January 1839.

Legis. Cons. 3 June 1839. No. 53. Proposed Modification of the Madras Judicial System.

As this matter, which has been lying over for two years and a half, is now attracting the attention of the Honourable Court, it is absolutely necessary that some decision should be come to.

There can, I imagine, be little hesitation about agreeing to the proposals contained in paragraphs 3, 4, 5 and 6 of the letter from the Madras government, of the 3d June 1836, in so far at least as to dispense with a reference to Mahomedan law, and the translation of the proceedings into the Persian language.

It appears also, for the reason given at the end of paragraph 6, that the original proceedings ought to be sent up to the Sudder Court in the language in which they are originally reduced to writing, leaving it discretional with the superior court to cause a translation into English to be made or not, as may be thought best.

There may be a difficulty about anticipating the general criminal code by passing the proposed particular enactment of which a draft is among the papers before us, but this is a point for the more immediate consideration of Mr. Amos.

Of the objections to the proposed substitution of zillah session judges for provincial courts, the two first urged by the Madras sudder, are, as is remarked in paragraph 7 of the above letter, of little or no force.

The third objection, as observed in paragraph 8, is of more weight, and ought to make us pause before we adopt all the changes recommended in the sequel.

The Madras sudder apprehend that it will be difficult to provide a substitute for the provincial courts, as a controlling authority.

I concur in this opinion: those courts were admirably constituted for the purposes of supervision and control. If they ever worked ill, that arose from errors of patronage, not of constitution. Among other merits, they were admirably suited to admit of a partial introduction of persons not belonging to any particular service, to aid in the higher administration of justice.

An able lawyer, with little acquaintance at first with the languages and manners of the people of the country, might still have proved a most useful colleague to his brother judges of a provincial court, though he would have been lost and unable to find his way as a solitary judge of a zillah.

This opinion I expressed before the provincial courts under this presidency were abolished in 1831; and retaining the same opinion still, confirmed by the laxity, disorder, and perplexity that have followed from that measure in this quarter, I am most unwilling that it should be extended to Madras.

The

No. I.
Judicial System of the Madras Presidency.

The last objection as stated in paragraph 9, resolves itself into a mere formal difficulty, easily to be got rid of.

The magistrates at Madras being all collectors, exercise little judicial power, and having secured criminals, make them over for primary investigation to the criminal judge, who can sentence to the extent of seven years' imprisonment, but must commit for trial before the judge of circuit, when a severer punishment seems to be required.

The disadvantages attending this mode of procedure are clearly detailed in paragraphs 9, 10, and 11. The remainder of the letter contains some judicious suggestions for the assimilation of the Madras system to that which obtained under this presidency at the date of the despatch, but has since been considerably modified.

The propriety of adopting these suggestions can be taken into consideration when we shall have to come to a determination upon the subject of retaining or abolishing the provincial courts.

(signed) *T. C. Robertson.*

MINUTE by the Honourable *W. W. Bird*, Esq. dated the 24th May 1839.

Legis. Cons. 3 June 1839. No. 54. Proposed Modification of the Madras Judicial System.

NOTHING, I apprehend, can be done at present relative to the contemplated reforms in the judicial system under the presidency of Fort St. George. The question has, as observed by Mr. Robertson, been long under consideration; but by a letter from the secretary to the Law Commission, dated the 30th of May 1837, written in reply to Mr. Secretary Macnaghten's communication of the 4th of July 1836, which has never yet been brought upon record, it appears that in the opinion of the Commissioners it is not advisable to begin to make any change in the system in question, until their inquiries shall be sufficiently advanced to enable them to say what arrangements should be adopted instead of it. They deprecate making any alteration in the existing establishments while the future system is still to be prepared.

That part of their labours by which their conclusions are to be arrived at respecting the changes to be made in the Madras judicial system, have not yet been gone through, and until they have, no alteration should, in their opinion, be attempted. Any change introduced in anticipation of what is likely ultimately to be fixed on, might differ not only with that which now exists, but also from that which may be hereafter established, and such a change, without attaining any important advantage, would, in a greater or less degree, tend to unsettle men's minds and give rise to much dissatisfaction.

Of these objections the Court of Directors were not aware at the date of their despatch to the government of Fort St. George, referred to in Mr. Chief Secretary Chamier's letter, dated the 30th of October last, or probably they would not have expressed a desire that the change in question should be partially carried into effect, before the arrangements are completed which are under the consideration of the Law Commission.

My own opinion is, for the reasons assigned by the Madras government, in Mr. Chamier's letter of the 30th June 1836, that the provincial courts of appeal and circuit under that presidency should be abolished, but I agree with the Law Commission that it should not be done prematurely, and that it would be better to wait until all the parts of the system to be finally adopted can be carried at once into effect.

I also agree with the Law Commission in regard to the recommendation contained in the 16th paragraph of Mr. Grant's letter, respecting the reference which the Madras Regulations require to be made to the Mahomedan law in the administration of criminal justice. That law might, I conceive, be dispensed with at Madras, to the same extent as it has been dispensed with in Bengal, without the smallest inconvenience, and I propose that a draft Act be prepared and transmitted, together with a copy of Mr. Grant's letter for the consideration of the government of Fort St. George, with a view to the accomplishment of that object.

(signed) *W. W. Bird.*

(No. 224.)

Legis. Cons. 3 June 1839. No. 55.

From *J. P. Grant*, Esq. Officiating Secretary to the Government of India, to *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission.

Sir,

Legislative Dep.

WITH reference to the letter of the officiating secretary to the Indian Law Commission, dated the 30th of May 1837, communicating the opinion of the Commissioners on certain proposed changes in the Madras judicial system, I am directed by the Honourable the President in Council to forward, for the consideration of the Commissioners, the accompanying copy of a letter from the chief secretary to the government of Fort St. George, dated the 30th of October 1838, enclosing an extract from a despatch from the Honourable the Court of Directors, dated the 5th of January 1838, (Judicial Department, No. 1,) on the same subject.

2. When the Honourable Court wrote that despatch, they had not been made acquainted with the sentiments of the Law Commissioners, conveyed in their officiating secretary's letter of the 30th of May 1837.

Those sentiments were opposed to the introduction at that moment of such a change in the Madras judicial system as would be involved in the abolition of the provincial courts, and the appointment of Commissioners, before the Law Commission might be able to report what system of judicial administration they might recommend to be finally settled for the provinces under the Madras government. The President in Council therefore does not propose to introduce the change that had been under contemplation, or any change of like extent, until the Law Commission may report that the objections they have noticed are, in their opinion, removed by the progress made in their labours. With reference to the sentiments of the Honourable Court, as expressed in the extract above alluded to, and to the importance of the question, the President in Council recommends this subject to the early attention of the Law Commission.

3. The President in Council has consulted the Madras government on the recommendation made in paragraph 16 of their officiating secretary's letter above referred to.

4. In the 20th paragraph of that letter it is said, "the Law Commissioners will submit hereafter a full exposition of their opinions on the general subject of appeal, including the question of giving the highest appellate jurisdiction to single judges. In the meantime they recommend that no change be made in the constitution of any of the sudder courts."

The President in Council presumes from this, that it was the intention of the Law Commissioners to treat this subject separately, before sending up their project of a code of procedure, or their outline of such a code, as proposed in their letter of the 23d of February 1838, and approved by government in Mr. Officiating Secretary Mangles' letter of the 16th April 1838. You are requested to state, for the information of his Honor, whether such be still the intention of the Law Commission.

I have, &c.
(signed) *J. P. Grant*,
Officiating Secretary to the Government of India.

Council Chamber, 3 June 1839.

(No. 345.)

Legis. Cons. 3 June 1839. No. 56.

From *J. P. Grant* Esq. Officiating Secretary to the Government of India, to *H. Chamier*, Esq. Chief Secretary to the Government of Fort St. George, dated *Fort William*, 3 June 1839.

Sir,

Legislative Dep.

I AM directed to acknowledge the receipt of your letters of the 3d June 1836, and 30th October last, with their respective enclosures, and in reply, to forward to you the accompanying copy of correspondence with the secretary to the Indian Law Commission of this date, and to state that, with reference to paragraph 16 of the letter from the officiating secretary to the Indian Law Commission, dated the 30th of May 1837, the Honourable the President in Council begs that he may be favoured with the opinion of the Right Honourable the Governor

in

in Council, after consulting the Sudder Court on the recommendation therein made.

2. His Honor in Council also requests that the Sudder Court may be called upon for the draft of an Act, such as they may think fitted for carrying the recommendation in question into effect, in case the government of India may determine on so doing.

I have, &c.
(signed) *J. P Grant*,
Officiating Secretary to the Government of India.

(No. 662.)

Legis. Cons. 9 Sept. 1839. No. 37.

From *H. Chamier*, Esq. Chief Secretary to the Government, Fort St. George, to *J. P. Grant*, Esq. Officiating Secretary to the Government of India, dated *Fort St. George*, 12th August 1839.

Sir,

Judicial Dep. 25 July 1839. No. 139.

Para. 1. WITH reference to your letter of the 3d June last, No. 345, I am directed by the Right Honourable the Governor in Council to transmit, for submission to the Honourable the President in Council, the accompanying copy of a letter from the acting register of the Foujdaree Udalut and of the draft Act received with it, for dispensing with the reference required by the Regulations to be made to the Mahomedan law officers in the Court of Foujdaree Udalut, and in the courts of circuit.

2. The expediency of abolishing all reference to the Mahomedan law in the administration of criminal justice has already been recommended by this government, in paragraph 4 of my letter of the 3d June 1836, No. 489, and the Right Honourable the Governor in Council entirely concurs with the judges in opinion, that no material objection exists to the immediate adoption of this measure in the Court of Foujdaree Udalut. Although the judges do not pronounce with the same confidence on the extension of the measure to the courts of circuit, yet his Lordship in Council has no reason to apprehend that any serious disadvantage will be experienced from such extension, and the administration of justice will unquestionably be greatly expedited, and most materially simplified.

I have, &c.
(signed) *H. Chamier*, Chief Secretary.

(No. 139.)

Legis. Cons. 9 Sept. 1839. No. 38. Enclosure.

From *T. H. Davidson*, Esq. Acting Register, to the Chief Secretary to Government.

Sir,

1. I AM directed by the judges of the Court of Foujdaree Udawlut to acknowledge the receipt of the Order of Government (No. 543), under date 8th instant, and of the papers therewith transmitted.

2. The judges are of opinion that no material objection exists to the adoption of the recommendation in paragraph 16 of the letter from the officiating secretary to the Indian Law Commissioners, dated 30th May 1837, that the reference required to be made to the Mahomedan law officers of the Foujdaree Udawlut, in trials referred for their final judgment, should be dispensed with; and it further appears to them that a provision to this effect will be necessary, in order to give effect to the intentions of the Supreme Government in respect to the judicial administration in certain parts of Ganjam and Vizagapatam, because the provisions of Clause 2, Section 2, Regulation I. of 1818, render a futwa indispensable in cases not specifically provided for by the Regulations.

3. Under the provisions of the Act No. XXX. of 1836, the Court of Foujdaree Udawlut considered themselves competent to proceed in the manner prescribed in Clause 1, Section 2, Regulation I. of 1818.

4. The judges have the honour to submit the draft of an Act, of which sections 1 and 2 are intended for the above purpose, in explanation of which it is to be observed, that in the instance of any offence which may never have formed the subject of a trial by the Foujdaree Udawlut, it would be open to the court to ascertain from their Mahomedan law officers whether or not it were punishable by that law, and that cases of abortion, rape, sodomy, arson, conspiracy, embezzlement,

No. I.
Judicial System of the Madras Presidency.

ment, fraud, kidnapping children, and wounding, which comprise all offences ordinarily the subject of referred trials, and not expressly provided for by penalties prescribed in the Regulations of this government, are at present punishable to the extent provided in Clause 3, Section 7, Regulation XV. of 1803.

5. As to the expediency of adopting the further suggestion of the Law Commissioners, that the requisition of a futwa by the courts of circuit should be dispensed with, the judges cannot pronounce with the same confidence. The measure is rather thrown out for consideration than positively recommended by the Law Commissioners, and the judges are not certain that the call upon them for the draft of an Act is intended to include the preparation of the provisions necessary in order to its adoption.

6. The judges observe that the Court of Directors in the concluding paragraph of their letter, No. 5, dated 17th September 1834, insist upon there being "at least one native assessor" to assist the judge of circuit in the event of the discontinuance of the Mahomedan law officers, and advert to the provisions on the subject contained in Bengal Regulation VI. of 1832.

7. The judges of the Foujdaree Udawlut are not prepared to recommend the extension of these provisions to this presidency, and consider the Mahomedan law officers to be more competent as assessors than other natives of the provinces of whose services the judge of circuit would generally be able to avail himself.

8. Should the government of India determine upon abolishing the present reference to the Mahomedan law officer by the courts of circuit, it appears to the judges that the measure might be effected by adding to the Act for the Foujdaree Udawlut the provisions of sections 3, 4, and 5 of the annexed draft; in explanation of which it appears sufficient to observe, that under the existing rules, punishment to the extent provided by Clause 7, Section 2, Regulation XV. of 1803, is adjudicable by the Court of Circuit for the offences mentioned above, and for theft, exceeding the jurisdiction of the criminal judge; and that on any new case that might arise a reference could be made to the Foujdaree Udawlut to ascertain whether or not the act charged were punishable under the Mahomedan law.

(signed) *T. H. Davidson*, Acting Register.

Foujdaree Udawlut, Register's Office,
25 July 1839.

I. It is hereby enacted, that in trials referred by the courts of circuit the Court of Foujdaree Udawlut at Madras shall not take a futwa from their law officers.

II. And it is hereby enacted, that in such trials the said court shall be competent to sentence the prisoners, on conviction, to suffer the punishment prescribed by the Regulations of the Madras code, in cases specifically provided for, and in all other cases punishable under the Mahomedan law to pass sentence of punishment to the extent authorised by Clause 3, Section 7, Regulation XV. of 1803, of that code.

III. And it is hereby enacted, that in trials before the courts of circuit, under the Madras presidency, no futwa shall hereafter be taken.

IV. And it is hereby enacted, that in cases specifically provided for by the Regulations of the Madras code, the Court of Circuit shall sentence the prisoners, on conviction, to suffer the punishment prescribed, if adjudicable by that court; and in cases not so provided for and punishable under the Mahomedan law, shall be competent to pass sentence of punishment to the extent authorised by Clause 7, Section 2, Regulation XV. of 1803.

V. And it is hereby enacted, that in all cases beyond the jurisdiction of the Court of Circuit, under existing Regulations, the trial shall be referred to the Court of Foujdaree Udawlut for their final judgment, and that in cases within the jurisdiction of the Court of Circuit, and specifically provided for by the Regulations, if the stated punishment appear to the judge of circuit too severe, he shall propose a mitigation of punishment according to the rules in force.

(signed) *T. H. Davidson*, Acting Register.

(True copies)

(signed) *H. Chamier*, Chief Secretary.

MINUTE by the Honourable *A. Amos*, Esq., dated the 30th August 1839.

Legis. Cons. 9 Sept. 1839. No. 39.

Dispensing with futwas, Madras Sudder Court.

FOR the reasons stated in the Madras letter, and perhaps others that may be mentioned, it seems to be inexpedient to dispense with the futwa in the circuit courts, especially as the criminal code, when passed into law, will entirely supersede futwas.

I have altered the principle of the Madras draft, which, as I understand it, makes all offences which, before the Act, are punishable under the Mahometan law, and not under the Regulations, to be punishable, after the passing of the Act, under a particular Regulation.

Now, I understand the Law Commissioners, in their 10th paragraph, and am disposed to concur with them, that it is not advisable to make at present material alterations in the Mahometan criminal law, *i. e.* in the substantive law.

In the adjective law, or law of procedure, it was proposed by the Commissioners, and I have so prepared the Act, to dispense with the futwa, on the assumption that those provisions of the Mahometan criminal law which were in force, and not superseded by the Regulations, were not, practically considered, very numerous, and that they had been so frequently brought before and acted upon by the Foujdaree Court, that upon reference to their own reports, or their own knowledge, they would have no difficulty in ascertaining the Mahometan law on any point, without a futwa.

(signed) *A. Amos.*

DRAFT ACT proposed by the President in Council, dated 9th September 1839.

Legis. Cons. 9 Sept. 1839. No. 40.

AN Act for regulating the Procedure on Trials referred to the Court of Foujdaree Udawlut at Madras, in cases determinable by the Mahometan law.

1. Whereas the dispensing with a futwa in cases determinable by the Mahometan law, and referred to the Court of Foujdaree Udawlut at Madras, will be attended with great convenience, whilst that law will be administered by that court in such cases with equal certainty after the futwa shall be dispensed with as heretofore; it is therefore hereby enacted, that in trials referred by the courts of circuit to the said Court of Foujdaree Udawlut at Madras, that court shall not be required to take a futwa from their law officers; provided always, that nothing in this Act contained shall alter or impair the authority of the Mahometan law in any case which before the passing of this Act would have been determinable according to that law by the said court.

(No. 486.)

From *J. P. Grant*, Esq. Officiating Secretary to the Government of India, to *T. H. Maddock*, Esq. Officiating Secretary to the Government of India, with the Governor-general, dated *Fort William*, 9 September 1839.

Legis. Cons. 9 Sept. 1839. No. 41.

Sir,

Legislative.

I AM directed by the Honourable the President in Council to forward to you, for submission to the Right honourable the Governor-general of India, the accompanying copies of papers noted on the margin, together with draft of proposed Act, dispensing with futwas of Mahomedan law officers in criminal cases tried by the Foujdary Adawlut at Madras.

Paras. 2 to 4, of a Letter from the Government of Fort St. George, dated 3 June 1836.

Para. 16, of a Letter from the Officiating Secretary to the Indian Law Commission, dated 30 May 1837.

Extract from Minute by the Hon. Mr. Robertson, dated 25 January 1839.

Ditto, by the Hon. Mr. Bird, dated 24 May 1839.

Letter to Chief Secretary to the Government of Fort St. George, dated 3 June 1839.

Letter from Chief Secretary to the Government of Fort St. George, dated 12 Aug. 1839, with Enclosure.

Minute by the Hon. Mr. Amos, dated 30 August 1839.

Draft of Act, dated 9 September 1839.

2. It will appear to his Lordship that the measure was first proposed by the government of Fort St. George in paragraph 4 of Mr. Chief Secretary Chamier's letter of 3d June 1836. On that occasion the local government in recommending certain modifications in the judicial system under that government, represented the great inconvenience which was frequently experienced in the administration of criminal justice, from the circumstance of referring to the Mahomedan law officers for their opinions on cases punishable under the Mahomedan law, and noticed the advantages which would result from the abolition of the practice in question. A regulation providing for this measure, as well as certain other matters connected with the judicial system under the Madras government, was submitted by the Governor in Council by the same opportunity.

No. I.
Judicial System of the Madras Presidency.

3. The papers were referred to the Indian Law Commissioners, who in furnishing their opinion on the several points noticed therein by the local government, though they objected to the Regulation prepared at Madras, agreed in the propriety of dispensing with the necessity of making a reference to a Mahomedan law officer in criminal trials, at least in the Court of Foujdary Adawlut, by an enactment which should not interfere with the substantive criminal law*. The Law Commissioners suggested that the measure might perhaps be advantageously extended to the courts of circuit under the Madras presidency, but they recommended that a reference should be made to the local government before enacting any law regarding the reform in the mode of procedure above alluded to, even as regarded the Foujdary Adawlut.

*See Para. 16, of Letter from Officiating Secretary to Indian Law Commissioners, dated 30 May 1837.

4. This letter (which consists principally of a discussion of a proposal for abolishing immediately the provincial courts at Madras) seems to have been mislaid for a long time. A duplicate of it having been obtained from the Law Commission, it, with the papers to which it related, was again taken into consideration on the 3d of June last, when a communication was made to Madras, as suggested by the Law Commissioners, requesting the opinion of the Right honourable the Governor in Council upon the proposal to dispense with the futwa, and begging that the draft of an Act might be prepared by the Sudder Court at the presidency, for carrying it into effect, if finally approved.

5. The local government have submitted the draft of an Act prepared by the Sudder Court, to the effect proposed by the Law Commissioners, and his Lordship in expressing his entire concurrence in the expediency of such a law, observes, that though the court are not confident of the advantages anticipated from the introduction of the same change of procedure in the courts of circuit, he sees no reason to apprehend any disadvantage from the extension of the practice to those courts.

6. His Lordship will observe that the draft Act which is proposed by the President in Council (prepared by the Honourable Mr. Amos) differs from that prepared by the Madras sudder, by making it more clear that no change is made in the substantive criminal law by this change of procedure. His Honor in Council is inclined to extend the law no further than the Foujdary Adawlut, on the grounds alluded to in Mr. Amos's minute.

7. If the Right honourable the Governor-general of India approve of the proposed enactment, your are requested to procure his Lordship's sanction to its being published for general information, and the assent required by section 70 of the Charter Act, to its being passed without any material alteration.

I have, &c.
(signed) *J. P. Grant,*
Officiating Secretary to Government of India.

Legis. Cons. 21 October 1839. No. 19. Legislative.

From *T. H. Maddock*, Esq. Officiating Secretary to the Government of India, with the Governor-general, to *J. P. Grant*, Esq. Officiating Secretary to the Government of India, Fort William, dated *Simla*, 3 October 1839.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 486, dated the 9th ultimo, with its enclosures, and in reply to convey the sanction of the Right hon. the Governor-general to the publication of general information of the proposed draft of Act, dispensing with futwas of Mahomedan law officers in civil cases tried by the Foujdary Adawlut at Madras.

2. His Lordship's assent in the usual form to pass the Act into law, is enclosed herewith.

I have, &c.
(signed) *T. H. Maddock,*
Officiating Secretary to the Government of India,
with the Governor-general.

Simla, 3 October 1839.

Legis. Cons. 21 October 1839. No. 20. Enclosure. Legislative.

I DO hereby under section 70, 3 & 4 Will. 4, c. 85, give my assent to the proposed Act for dispensing with futwas of Mahomedan law officers in criminal cases tried by the Foujdary Adawlut at Madras, received from the Honourable the President in Council, in Mr. Officiating Secretary Grant's letter, No. 486, dated the 9th September last.

(signed) *Auckland.*

FORT WILLIAM, Legislative Department, the 21st October 1839.

Legis. Cons. 21 October 1839. No. 21.

THE following draft of a proposed Act was read in Council for the first time, on the 21st October 1839.

Act No. —— of 1839.

An Act for regulating the Procedure on Trials referred to the Court of Foujdaree Udalut at Madras, in cases determinable by the Mahometan law.

1. Whereas the dispensing with a futwa, in cases determinable by the Mahometan law, and referred to the Court of Foujdaree Udalut at Madras, will be attended with great convenience, and the futwa may be dispensed with in that court, without altering or impairing the authority of the Mahometan law; it is therefore hereby enacted, that in trials referred by the courts of circuit to the said Court of Foujdaree Udalut at Madras, that court shall not be required to take a futwa from their law officers; provided always, that nothing in this Act contained shall authorize the said court to dispense with the Mahometan law in any case which, before the passing of this Act, would have been determinable according to that law by the said court.

Ordered that the draft now read be published for general information.

Ordered, that the said draft be reconsidered at the first meeting of the Legislative Council of India, after the 21st day of January 1840.

J. P. Grant,
Officiating Secretary to the Government of India.

(No. 542.)

From *J. P. Grant*, Esq. Officiating Secretary to Government of India, to *H. Chamier*, Esq. Chief Secretary to the Government of Fort St. George, dated *Fort William*, the 21st October 1839.

Legis. Cons. 21 October 1839. No. 22.

Sir,

I AM directed by the Honourable the President in Council to acknowledge the receipt of your letter, No. 662, of the 12th of August last, with its enclosure, and in reply to forward to you, for the information of the Right honourable the Governor in Council, the accompanying printed copies of a proposed Act for dispensing with futwas of Mahomedan law officers in civil cases tried by the Foujdary Udawlut at Madras, which has been read in Council for the first time on this date, and will be published for general information in the Calcutta Gazette.

Legislative.

I have, &c.
(signed) *J. P. Grant,*
Officiating Secretary to Government of India.

(No. 922.)

From *H. Chamier*, Esq. Chief Secretary to the Government, Fort St. George, to *J. P. Grant*, Esq. Officiating Secretary to the Government of India, dated *Fort St. George*, the 22d November 1839.

Legis. Cons. 27 January 1840. No. 1.

Sir,

Para. 1. WITH reference to your letters of the 2d and 21st ultimo, Nos. 551 & 542, I am directed by the Right honourable the Governor in Council to transmit, for submission to the Honourable the President in Council, the accompanying copy of a letter from the Acting Register of the Foujdaree Udawlut, dated the 14th instant, No. 213, suggesting, with reference to the provisions of Act XXIV. of 1839, that the proposed law for regulating the procedure on trials referred to that court may be enacted as soon as possible, and recommending an alteration in the wording of the proposed new law, so as not to restrict its provisions to cases determinable by the Mahomedan law, but to bring also within their scope all cases whatsoever referred to the Foujdaree Udawlut, together with a copy of the previous correspondence with that court, as noted in the margin, from which it will be seen that this government considered separate legislation on account of trials which may be referred by the agents to the Governor of Fort St. George in Ganjam and Vizagapatam,

Judicial Dep.

Letter from the Register of the Foujdaree Udawlut, dated 28 Oct. 1839, No. 203.
Order of Government thereon, dated 9 Nov. 1839, No. 891.

No. I.
Judicial System of the Madras Presidency.

Vizagapatam, as originally proposed by the Court of Foujdaree Udawlut, to be unnecessary.

2. In conclusion, I am directed to observe that it was not intended to express a dissent from the opinion of his Honor in Council that the question of dispensing with the futwa to be totally distinct from that of superseding the Mahomedan law.

I have, &c.
(signed) *H. Chamier*, Chief Secretary.

(No. 203.)

Legis. Cons. 27 January 1840. No. 2.

From *T. H. Davidson*, Esq. Acting Registrar, to the Chief Secretary to Government.

Sir,

Enclosure.

THE judges of the Foujdaree Udawlut direct me to submit, for the consideration of government, the following observations, which have been suggested by a perusal of the Act of the government of India, No. XXIV. of 1839, passed by the Honourable the President of the Council of India in Council, on the 2d October 1839, and republished in the Fort St. George Gazette, of the 22d instant, No. 875, "for the administration of justice and collection of the revenue in certain parts of the districts of Ganjam and Vizagapatam."

Para. 2. 2. In the letter from this court to government, dated 25th July 1839, No. 139, it is stated to be the opinion of the court that a provision for dispensing with the futwa of the law officers, in cases referred to the Foujdaree Udawlut, would "be necessary in order to give effect to the intentions of the Supreme Government in respect to the judicial administration in certain parts of Ganjam and Vizagapatam, because the provisions of Clause 2, Section 2, Regulation I. of 1818, render a futwa indispensable in cases not specifically provided for by the Regulations.

Para. 3. 3. It was at the same time observed that "under the Act No. XXX. of 1836, the Court of Foujdaree Udawlut considered themselves competent to proceed in the manner prescribed in Clause 1, Section 2, Regulation I. of 1818."

4. And in the letter from this court, dated 26th July 1839, it was stated, with reference to the foregoing remarks, that it appeared to the judges "that the Para. 2. concluding words of section 5 of the draft of the proposed Act were incompatible with the provisions of Section 2, Regulation I. of 1818, which prescribe the manner in which the Foujdaree Udawlut are to proceed on trials referred by a judge on circuit."

5. The said section 5 of the proposed Act was worded as follows: "And it is hereby enacted, that upon the receipt of any criminal trials referred by either of the agents under the rules which may be hereafter prescribed by the Governor in Council, the Foujdaree Udawlut shall, without submitting the proceedings for the futwa of their law officers, proceed to pass a final judgment, or such other order as may, after mature consideration, seem to the court requisite and proper, in the same manner as if the trial had been sent up in ordinary course from a judge on circuit."

6. Section 5 of the Act which has been passed, and is now law, is word for word the same as section 5 of the draft, with the important omission of the passage which in the preceding paragraph has been underlined.

7. The effect of this omission appears to the judges to be that in these trials the Foujdaree Udawlut must take a futwa, and proceed in all respects "as if the trial had been sent up in ordinary course from a judge on circuit."

8. The judges, though they cannot think that this is the intention of the Supreme Government, and are unable to account for this alteration of the provisions in question, have considered it their duty to lose no time in making known their views of the effect of the Act, as passed, to the government, who are empowered by section 4, to prescribe rules "for the guidance" of the agents mentioned in section 3, and to define the authority to be exercised by the agents in criminal trials, and what cases he (they?) shall submit for the decision of the Foujdaree Udawlut.

9. It appears to the judges that either the said agents must send the original proceedings in all referred trials, with translations thereof in English, and from such original proceedings, Persian translations must, the judges conceive, be made here for the use of the law officers of the Foujdaree Udawlut, or if the said agents

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are to hold trials of the highest class of crimes with a Mahomedan law officer, which, with reference to Section 12, Regulation VIII. of 1802, is clearly understood to be the course of proceeding in trials coming before the Foujdaree Udawlut, from the courts of circuit, they will prepare a Persian version for his use, and submit the same to this court, "in the same manner" as a judge of circuit,

10. That neither of these modes of proceeding is intended, is, the judges conceive, clearly inferrible from former correspondence on this subject; but the Act, as passed, appears to them to require the adoption of one or the other, and if that be not intended, its provisions must, in their opinion, be modified, unless provisions should be enacted for discontinuing the requisition of a futwa by the Foujdaree Udawlut in all cases, as lately proposed.

(signed) *T. H. Davidson*,
Acting Register.

Foujdaree Udawlut, Register's Office,
28 October 1839.

(No. 891.)

As a draft of an Act for enabling the Court of Foujdaree Udawlut to dispense with futwahs in all cases disposed of by them has already been read in the Council of India, and may be expected in a short time to become law, the Right honourable the Governor in Council does not consider it necessary to request the government of India to legislate separately for trials which may in the interim be referred to that court, under the provisions of Section 5, Act XXIV. of 1839, by the agents to the Governor of Fort St. George, in Ganjam and Vizagapatam.

Fort St. George, 9 November 1839.

(True copies.)
(signed) *H. Chamier*,
Chief Secretary.

(No. 213.)

Legis. Cons 27 January 1840. No. 3. Enclosure.

From *T. H. Davidson*, Esq., Acting Register, to the Chief Secretary to Government.

Sir,

Para. 1. With reference to the draft republished at page 756 of the Fort St. George Gazette of the 5th inst., of a proposed Act "for regulating the Procedure on Trials referred to the Court of Foujdaree Udawlut at Madras in Cases determinable by the Mahomedan Law," which is ordered to be reconsidered at the first meeting of the Legislative Council of India after the 21st day of January 1840, I am directed by the judges of the Foujdaree Udawlut to observe, that in the interval between the 1st proximo, the date on which the Act No. XXIV. of 1839, will be brought into operation, and the promulgation of the proposed new law, it will be necessary for this court to take futwas in cases referred for their final judgment by the agents of the governor of Fort St. George; and in order thereto, to prepare Persian translations of the proceedings.

2. It will be some time, perhaps, before any such reference is made, but to obviate the inconvenience of such a course, the judges beg leave respectfully to suggest that it be recommended to the Supreme Government to pass the proposed new law as soon as possible.

3. It appears, however, to the Foujdaree Udawlut, that, before the proposed draft is passed into a law, the words "in cases determinable by the Mahomedan law" contained in its title, and the words in the enacting clause "determinable by the Mahomedan law, and" following "futwa," as well as the words "by the court of circuit," should be omitted from it altogether.

4. The object of the proposed Act is to do away with futwas altogether, whether in cases determinable by the regulations or by the Mahomedan law, and it should apply to all trials referable to the Foujdaree Udawlut, whether from the circuit courts, special commissions or courts, agents of the Governor, or others who now are or hereafter may be empowered to refer such trials.

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No. I.
Judicial System of the Madras Presidency.

5. The Act, as proposed by the judges, would run as follows:

"An Act for regulating the Procedure on Trials referred to the Court of Foujdaree Udawlut at Madras.

"Whereas the dispensing with a futwa in cases referred to the Court of Foujdaree Udawlut at Madras will be attended with great convenience, and the futwa may be dispensed with in the court without altering or impairing the authority of the Mahomedan law, it is therefore hereby enacted, that in trials referred to the said Court of Foujdaree Udawlut at Madras, that court shall not be required to take a futwa from their law officers; provided always, that nothing in this Act contained shall authorize the said court to dispense with the Mahomedan law in any case which, before the passing of this Act, would have been determinable according to that law by the said court."

(signed) *T. H. Davidson*, Acting Register.

Foujdaree Udawlut, Register's Office,
14 November 1839.

(A true copy.)

(signed) *H. Chamier*, Chief Secretary.

Legis. Cons. 27 January 1840. No. 4. Futwa Act.

MINUTE by the Honourable *A. Amos*, Esq. dated 6 December 1839.

THE Madras government agrees with us that there is no occasion to legislate about futwas, especially with reference to the Vizagapatam Act.

But I should think the Futwa Act had better be altered in the terms proposed by the Madras Court. The principle of the Act was, that the principal court of the presidency could find its way to the law without the intervention of a law officer. I was not aware that at Madras a law officer was employed to instruct the Sudder Court by means of his futwa as to the "law prescribed by the Regulations."

(signed) *A. Amos.*

ACT No. I. of 1840.

Legis. Cons. 27 January 1840. No. 5.

Passed by the Honourable the President of the Council of *India* in Council, on the 27th January 1840.

AN Act for regulating the Procedure on Trials referred to the Court of Foujdaree Udalut at Madras.

1. WHEREAS the dispensing with a futwa in cases referred to the Court of Foujdaree Udalut at Madras will be attended with great convenience, and the futwa may be dispensed with in that court without altering or impairing the authority of the Mahometan law; it is therefore hereby enacted, that in trials referred to the said Court of Foujdaree Udalut at Madras, that court shall not be required to take a futwa from their law officers; provided always, that nothing in this Act contained shall authorize the said court to dispense with the Mahometan law in any case which, before the passing of this Act, would have been determinable according to that law by the said court.

— (A.) No. II.—Part 1. —

No.II.—Part 1. Articles of War.

ARTICLES OF WAR.

(No. 260.)

EXTRACT from the PROCEEDINGS of the Right Honourable the Governor-general of India in Council, in the Military Department under date the 18th of September 1837.

Legis. Cons. 26 Feb. 1838. No. 6.

READ a letter from the assistant adjutant-general of the army, No. 18, under date the 13th of January last, submitting for the consideration of the government, by order of his Excellency the Commander-in-chief, a draft of rules and articles for the better government of the native officers and soldiers in the armies of the East India Company.

Read also the minutes on the subject of these rules and articles recorded by the Governor-general, Colonel Morison, and Mr. Shakespear.

Resolved, with reference to sect. 73. of the 3 & 4 Gul. 4, c. 85, that the revised draft of rules and articles of war for the native armies of the three presidencies, received from his Excellency the Commander-in-chief, be sent to the Legislative Department for consideration and the necessary orders.

Ordered, that a copy of the foregoing resolution, with the letter of the assistant adjutant-general of the army, the draft of rules and articles, and the minutes relating thereto, be sent to the Legislative Department.

Ordered, that the papers in original which accompany the draft of rules and articles be returned from the Legislative to this department, when no longer required in the former.

(True extract.)

(signed) *W. Casement*, M. G.
Secretary to the Government of India, Military Department.

RULES and ARTICLES for the better Government of the Native Officers and Soldiers in the Service of the East India Company.

Legis. Cons. 26 Feb. 1838. No. 7.

SECTION I.

Of Enlisting and Discharges.

Art. 1. Articles of war and declaration to be read, and oath to be administered, to all recruits, p. 20
Art. 2. Recruits for general service - - p. 21
Art. 3. Commissioned officers, non-commissioned officers, and soldiers, by what authority to be dismissed - - - - - - - p. 21
Art. 4. Non-commissioned officers and soldiers to be furnished with a discharge certificate - p. 21
Art. 5. Penalty of enlisting in other regiments, &c. without a discharge from former regiment, p. 21

SECTION II.

Crimes and Punishments:

Crimes punishable with Death, Transportation, &c.

Art. 6. Mutiny - - - - - - - p. 21
Art. 7. Violence to superiors - - - p. 21
Art. 8. Desertion - - - - p. 21
Art. 9. Sleeping on or quitting post - p. 21
Art. 10. Violence to bringer of provisions, or forcing a safeguard - - - - - - - p. 21
Art. 11. Betraying the watchword - - p. 22
Art. 12. Making false alarms - - - p. 22
Art. 13. Holding correspondence with the enemy, p. 22
Art. 14. Relieving or harbouring the enemy, p. 22
Art. 15. Search of plunder - - - - p. 22
Art. 16. Casting away arms, &c. - - - p. 22
Art. 17. Misbehaving before the enemy - p. 22
Art. 18. Abandoning post to the enemy - p. 22
Art. 19. Suffering enemy to escape - - p. 22
Art. 20. Embezzling stores, &c. - - - p. 22

Crimes not punishable with Death or Transportation.

Art. 21. Persuading to desert - - - p. 22
Art. 22. Not joining from leave when corps ordered on service - - - - - - - p. 22
Art. 23. Taking bribes - - - - - p. 22
Art. 24. Causing false alarms in time of peace, p. 22
Art. 25. Being two miles from camp - - p. 22
Art. 26. Not repairing to parade - - p. 22
Art. 27. Quitting company or troop without leave, p. 22
Art. 28. Quitting guard - - - - - p. 23
Art. 29. Releasing prisoners, or suffering them to escape - - - - - - - - p. 23
Art. 30. Not seeing reparation done - - p. 23
Art. 31. Entertaining deserter - - - p. 23
Art. 32. Drunkenness on duty - - - p. 23
Art. 33. Violence to a sentry - - - p. 23
Art. 34. False returns or reports - - p. 23
Art. 35. False certificates to obtain pension, p. 23
Art. 36. Disgraceful conduct of commissioned officers - - - - - - - - p. 23

Art. 37.

No. II.—Part 1.

Articles of War.

Art. 37. Breach of arrest - - - - p. 23
Art. 38. Menacing words, &c. before a court martial - - - - - - - - - p. 23
Art. 39. Penalty of remaining out of camp at night, p. 23
Art. 40. Penalty of theft - - - - p. 23

Crimes punishable with Fine, Stoppages, or Forfeiture of Pay, in addition to other Punishments.

Art. 41. Committing wastes or plunder - p. 23
Art. 42. Extortion by commissioned officer, p. 24
Art. 43. Extortion by non-commissioned officer or soldier - - - - - - - - p. 24
Art. 44. Selling or wasting ammunition - p. 24
Art. 45. Spoiling horse, arms, &c. - - p. 24
Art. 46. Not disbursing pay, or making deductions, p. 24
Art. 47. Not attending as a witness, refusing to be sworn, or prevarication - - - - p. 24
Art. 48. Perjury - - - - - p. 24
Art. 49. Absence without leave, or over-staying leave - - - - - - - - p. 24
Art. 50. Malingering - - - - - p. 24
Art. 51. Crimes not specified - - - p. 24

SECTION III.

Administration of Justice.

Art. 52. Commander-in-chief to appoint courts martial - - - - - - - - - p. 24
Art. 53. Commander-in-chief may delegate power of convening courts martial - - - p. 25
Art. 54.* Formation of general courts martial, p. 25
Art. 55. Method of voting; equality of votes, p. 25
Art. 56. Concurrence in sentence of death - p. 25
Art. 57. Confirmation of sentence - - p. 25
Art. 58.* Commutation of death to transportation, &c. - - - - - - - - - p. 25
Art. 59.* General court martial may award imprisonment - - - - - - - p. 25
Art. 60. Hours of sitting - - - - p. 25
Art. 61. Senior officer to preside - - p. 25
Art. 62. At all inferior courts martial a European officer is to superintend - - - - p. 25
Art. 63. Interpreter to be appointed; form of oath, and to judge advocate or superintending officer, p. 25
Art. 64. Witnesses to be examined on oath or declaration - - - - - - - p. 26
Art. 65. Persons not amenable to military authority, how to be summoned - - - p. 26
Art. 66. How punished for not attending, or perjury, p. 26
Art. 67. Persons not amenable to the articles to be sent to the magistrate - - - - p. 26
Art. 68. Hindoos and Mussulmans, exempted from taking an oath, to subscribe a declaration, p. 26
Art. 69.* Arrest or imprisonment - - p. 27
Art. 70.* Commissioned officers amenable to general courts-martial only - - - - - p. 27
Art. 71.* Commissioned officers may be sentenced to suspension or loss of rank - - - p. 27
Art. 72.* Commanding officer to assemble and confirm inferior courts martial - - - p. 27
Art. 73. No officer commanding less than four companies to confirm sentence - - - p. 27
Art. 74.* Inferior courts to consist of not less than five officers - - - - - - - p. 27
Art. 75. Non-commissioned officers punished with loss of rank, &c. - - - - - - p. 27
Art. 76.* Imprisonment awardable by inferior courts martial - - - - - - - - p. 27
Art. 77.* Stoppages not exceeding half-pay and allowances - - - - - - - - p. 27
Art. 78.* Corporal punishment to be awarded to camp followers only - - - - p. 27
Art. 79.* Commanding officer may award drill or extra duty - - - - - - - p. 27
Art. 80.* Non-commissioned officers, how to be reduced - - - - - - - - p. 27
Art. 81.* Redress of wrongs - - - p. 27
Art. 82.* No person to be tried a second time, p. 28
Art. 83.* Limitation of liability to trial - p. 28
Art. 84.* Courts of requests - - - p. 28

SECTION IV.

Effects of the Dead.

Art. 85. Effects of deceased commissioned, non-commissioned officers, soldiers, and public servants - - - - - - - - p. 28
Art. 86. Rules for disposal of effects when no executor is on the spot - - - - - p. 29

SECTION V.

Relating to the foregoing Articles.

Art. 87. All persons serving with any part of the army are to be governed by these Articles, and be amenable to trial by court martial - - p. 29
Art. 88.* When troops are serving where there is no court of civil judicature, serious offences may be tried by general courts martial - - p. 29
Art. 89.* General courts martial for trial of persons accused of any crime committed against the property, &c. of an inhabitant of any place out of the territories where troops shall be serving - p. 29
Art. 90. Trial of rebels after martial law has been proclaimed - - - - - - - p. 29
Art. 91.* Trial of persons aiding the enemy p. 29
Art. 92. Punishment extending to life or transportation to be restricted to crimes expressly so declared in these Rules and Articles - - p. 30
Art. 93. Nizamut Adawlut to give effect to sentences of transportation - - - - p. 30
Art. 94. Magistrates to give effect to sentences of imprisonment by military authority - p. 30
Art. 95.* When a fine is adjudged by a court-martial, the pay or property, &c. of the offender within camp shall be available - - p. 30
Art. 96.* Officer, non-commissioned officers, or soldiers not entitled to full pay, &c. when in confinement on a criminal charge; if acquitted, to receive all arrears - - - - - p. 30
Art. 97.* Officers, non-commissioned officers, or soldiers made prisoner, to forfeit claim to pay and allowances - - - - - - - p. 30
Art. 98.* Effects of deserters - - - p. 30
Art. 99. Christians not amenable to these Rules and Articles - - - - - - - - p. 30
Art. 100. Rules and Articles to be published, p. 30

SECTION I.

Of Enlisting and Discharges.

Articles of war and declaration to be read, and oath to be administered to all recruits.

Art. 1. Every recruit, prior to being enrolled in his regiment, shall have the articles of war relating to mutiny and desertion read and explained to him, after which the following declaration shall be made to him by the officer commanding, in front of the corps, in presence of the native officers and soldiers.

Declaration.

Declaration.

"In time of peace, after having served five years, on making application for your discharge, through the commanding officer of your company, it will be granted you within three months from the date of your application, provided it will not cause the vacancies in your company to exceed 10, in which case

you

you shall remain until that objection be removed; but in time of war you have no claim to a discharge, but shall remain and do your duty until the necessity of retaining you in the service shall cease."

The following oath shall then be required from him, according to the tenets of his religion, in front of the colours:

Oath

Oath.

"I, *A. B.* inhabitant of village purgunnah subah son of do swear that I will never forsake or abandon my colours* ; that I will march wherever I am directed, whether within or beyond the Company's territories; that I will implicitly obey all the orders of my superior officers, and in everything behave myself as becomes a good soldier and faithful servant of the State."

* The word "guns" to be substituted for colours in swearing in artillery recruits.

Art. 2. And when any recruit is enlisted for corps raised for general service the following words shall be added to the declaration made to him previously to enrolment:

Recruits for general service.

"And you engage to embark on board ship whenever the service shall require your proceeding by sea." [And the following words shall be added to the form of oath for all recruits for those corps]: "And I do further swear that I will readily embark on board ship whenever the service shall require me to proceed by sea."

Art. 3. No commissioned officer shall be dismissed excepting by an order from the government, or from the Commander-in-chief, or by the sentence of a general court martial. Non-commissioned officers and soldiers may be discharged the service by order of the officer commanding-in-chief at the presidency to which such non-commissioned officer or soldier may belong, or by sentence of a court martial, and every such discharge shall include forfeiture of all claim to pension; provided that no sentence of discharge awarded by a court martial inferior to general shall be carried into effect, without the concurrence of the general or other officer commanding the division, district, or field force with which the prisoner may be serving.

Commissioned officers, non-commissioned officers, and soldiers, by what authority to be dismissed the service.

Art. 4. All non-commissioned officers and soldiers discharged the service shall be furnished by the commanding officer of the corps with a discharge certificate, made out in the vernacular language of the individual discharged, with an English translation, expressing the authority for or cause of such discharge, and the period of their service in the corps to which they may at the time belong.

Non-commissioned officers and soldiers to be furnished with a discharge certificate.

Art. 5. No non-commissioned officer or soldier shall enlist himself in any other regiment without a regular discharge from his former corps, under the penalty of being reputed a deserter, and suffering accordingly.

Penalty of enlisting in other regiments, &c. without a discharge from former regiment.

Section II.

Crimes and Punishments.— Crimes punishable with Death, Transportation, &c.

Art. 6. Any officer, non-commissioned officer, or soldier, who shall begin, excite, cause, or join in any mutiny or sedition in the regiment or corps to which he belongs, or in any other corps in the service, or serving as allies, on any pretence whatsoever, or who being present at any mutiny or sedition shall not use his utmost endeavours to suppress it, or who coming to the knowledge of any mutiny, intended mutiny, or concealed combination against the State, who shall not without delay give information thereof to his commanding officer; or,

Penalty of mutiny.

Art. 7. Who shall strike his superior officer, or shall draw, or offer to draw, or lift up any weapon, or use, or offer any violence against him, on any pretence whatever, or shall disobey any lawful command of his superior officer.

Penalty of striking, or drawing any weapon against a superior officer, &c.

Art. 8. Who shall be convicted of desertion.

Penalty of desertion

Art. 9. Who in time of war or alarm shall be found sleeping upon his post, or shall leave it before regularly relieved.

Penalty if a sentry be found sleeping on his post, or of quitting it before he is relieved, in time of war or alarm.

Art. 10. Who, in time of war or alarm, shall do violence to any person bringing provisions or other necessaries to the cantonment or camp of the troops employed, or shall force a safeguard; or,

Penalty of doing violence to any person who brings provisions to the camp or quarters, in time of war or alarm.

Penalty of making known the watchword.

Art. 11. Who shall treacherously make known the watchword to any person not entitled to receive it according to the rules and discipline of war; or,

Penalty of making false alarms in camp or quarters.

Art. 12. Who in time of war, shall by discharging of fire-arms, drawing of swords, beating drums, making signals, using words, or by any means whatsoever intentionally occasion false alarms in action, camp, garrison, or quarters; or,

Penalty of holding correspondence with, or giving intelligence to the enemy.

Art. 13. Who shall be convicted of holding correspondence with, or giving intelligence to the enemy, or any person in rebellion, either directly or indirectly, or coming to the knowledge of such correspondence, shall not discover it immediately to his commanding officer; or,

Penalty of relieving or harbouring an enemy.

Art. 14. Who shall, directly or indirectly, assist or relieve the enemy or person in rebellion, with money, victuals, or ammunition, or shall knowingly harbour or protect an enemy or rebel; or,

Penalty of going in search of plunder.

Art. 15. Who shall leave his commanding officer, or his post, or company, in time of action, or go in search of plunder; or,

Penalty of casting away arms or ammunition.

Art. 16. Who shall in presence of an enemy cast away his arms or ammunition; or,

Penalty of misbehaving before the enemy.

Art. 17. Who shall misbehave himself before the enemy, or use means to induce others so to misbehave; or,

Penalty of shamefully abandoning, &c. to the enemy any garrison, fortress, &c.

Art. 18. Who shall shamefully abandon or deliver up to the enemy any garrison, fortress, post, or guard committed to his charge, or which it was his duty to defend, or who shall use means to induce any other officer, non-commissioned officer, or soldier, so to abandon or deliver up any such garrison, fortress, post, or guard; or,

Penalty of treacherously suffering an enemy to escape.

Art. 19. Who shall treacherously release wilfully, or connive at the escape of any enemy or rebel placed as a prisoner under his charge, shall suffer death, or transportation, or imprisonment, with or without hard labour, for life, or for a term of years, as a general court martial shall award.

Penalty of selling stores, &c. the property of Government.
Transportation, hard labour, or imprisonment may be awarded.

Art. 20. Any officer, non-commissioned officer, or soldier, who shall embezzle or fraudulently misapply any money entrusted to him on the public account, or for any military purpose, or any provisions, forage, arms, clothing, ammunition, or military stores of whatever kind or description, the property of government, entrusted to his charge, or who shall be concerned in or connive at any such embezzlement or fraudulent misapplication, shall, on conviction thereof before a general court martial, be dismissed the service and fined to the extent of the loss or damage; and be further liable to be transported for life, or for a term of years, or to suffer imprisonment, with or without hard labour, not exceeding four years.

Crimes not punishable with Death or Transportation.

Penalty of persuading any one to desert.

Art. 21. Any officer, non-commissioned officer, or soldier, who shall be convicted of having advised or persuaded any other officer, non-commissioned officer, or soldier, to desert, or having connived at such desertion; or,

Penalty of not joining from leave without delay when corps is ordered on service.

Art. 22. Who being on leave of absence, shall have received information from the head quarters of his regiment, or from other competent authority, that his corps has been ordered on service, and shall not rejoin without delay; or,

Penalty of taking a bribe for procuring leave, &c.

Art. 23. Who, directly or indirectly, shall require or accept a bribe, present, or gratification, on the pretence of procuring leave of absence, promotion, or any other advantage or indulgence for any officer, non-commissioned officer, or soldier; or,

Penalty of occasioning false alarms in time of peace.

Art. 24. Who in time of peace, shall by discharging fire-arms, drawing swords, beating drums, or by any other means whatever occasion false alarms in camp, garrison, or quarters; or,

Penalty of being two miles from camp without leave.

Art. 25. Who shall be found two miles from the camp without leave; or,

Penalty of not repairing at the time fixed to the parade, &c.

Art. 26. Who shall fail to repair at the time fixed to the parade or place appointed, if not prevented by sickness or some other sufficient cause; or,

Penalty of quitting company or troop without leave.

Art. 27. Who shall without urgent necessity, or without leave of his superior officer, quit his company or troop; or,

Art. 28.

Art. 28. Who shall quit his guard or post, without being regularly dismissed or relieved; or,

Penalty of quitting guard or post without being relieved, &c.

Art. 29. Who, being in command of a guard, shall refuse to receive any prisoner duly committed to his charge, or shall without proper authority release any prisoner, or shall suffer through carelessness or neglect any prisoner to escape; or,

Penalty of releasing a prisoner without orders, or suffering him to escape

Art. 30. Who, being in command at any post, or on the march, on complaint made to him of any person under his command beating or otherwise ill-treating any person, or extorting from him more than he is obliged to furnish by authority, or disturbing fairs, or market, or committing any kind of riot, shall not see reparation done to the party or parties injured, or if that be impracticable, shall not report the same to his superior officer, shall be punished according to the sentence of a general or other court martial.

Penalty of not seeing reparation done to persons ill-treated, &c.

Art. 31. Any officer, non-commissioned officer, or soldier, who shall knowingly enlist a deserter, or shall not after his being discovered, immediately cause him to be confined, and give notice thereof to the nearest commissioned officer; or,

Penalty of entertaining a deserter.

Art. 32. Who shall be found drunk on duty; or,

Penalty of drunkenness on duty.

Art. 33. Who shall strike or do violence to a sentry; or,

Penalty of striking or doing violence to a sentry.

Art. 34. Who shall knowingly make a false return or report to any of his superior officers authorised to call for such return or report, of the state of the men under his command, or of arms, ammunition, clothing, or other stores thereunto belonging, or of which he may otherwise have charge; or,

Penalty of false returns of reports.

Art. 35. Who shall be convicted of obtaining or attempting to obtain for himself, any officer, or soldier, or for any other person whatsoever, any pension or allowance, by any false statement, certificate, or document, or by the omission of the true statement; or,

Penalty of false certificates, &c, to obtain pension, &c.

Art. 36. Any officer who shall behave in a disgraceful manner, unbecoming the character of an officer, the fact or facts whereon the charge is grounded being clearly specified, shall, if an officer, on conviction thereof before a general court martial, be dismissed the service; and if a non-commissioned officer or soldier, shall, on conviction thereof, be punished according to the sentence of a court martial.

Penalty of disgraceful conduct of commissioned officers.

Art. 37. Whatsoever officer under arrest shall leave his confinement before he is set at liberty by competent authority, shall be dismissed the service, or be otherwise punished according to the judgment of a general court martial.

Penalty of breach of arrest.

Art. 38. Any person using menacing words, signs, or gestures, in the presence of a court martial, or causing any disorder so as to disturb their proceedings, or in any way being guilty of contempt of court, shall, if amenable to the Articles of War, be punished according to the nature and degree of his offence by the judgment of another court martial; if not amenable to such articles, the offender shall be transmitted to the civil magistrate, who shall proceed against him as if the offence had occurred in his own court.

Penalty of using menacing words, gestures, &c. before a court martial

Art. 39. Any officer, non-commissioned officer, or soldier, who shall be absent from his cantonments after tattoo, or from camp after retreat beating, without leave from his superior officer, shall be liable to punishment according to the circumstances and degree of his offence.

Penalty of remaining night out of camp or quarters.

Art. 40. Whatsoever non-commissioned officer or soldier shall be convicted of stealing money or goods the property of a comrade or of a military officer, or of committing any petty offence of a fraudulent nature, to the injury of or without intent to injure any person, civil or military, shall suffer such punishment as may by a court martial be awarded, and the property so fraudulently obtained shall be restored to the owner.

Penalty of stealing from a comrade, &c.

Crimes punishable with Fine, Stoppages, or Forfeiture of Pay, in addition to other Punishments.

Art. 41. Any officer, non-commissioned officer, or soldier, who shall without orders commit waste or plunder, either in towns or villages, gardens or fields, or shall injure or destroy the property, or shall do violence on the person of any of the

Penalty of committing any waste or spoil in towns, villages, gardens, &c.

the inhabitants, shall make compensation for the injury committed, and be also punished according to the sentence of a court martial.

Penalty of extorting money, &c. as fees, duties, or on any pretence whatsoever.

Art. 42. Any commissioned officer commanding at any post, or on the march, who shall on any pretence whatever, illegally and against the will of the parties, extort money or other property or services, shall make compensation, and be otherwise punished according to the sentence of a general court martial.

Penalty of a non-commissioned officer or soldier extorting money, &c. as fees, on any pretence whatsoever.

Art. 43. Any non-commissioned officer or soldier, at any post, or on the march, who shall extort money or property of any description as fees or duties, or on any pretence whatever, or shall without authority exact from villagers or others, carriage, porterage, or provisions; or,

Penalty of selling or wasting ammunition delivered out.

Art. 44. Who shall sell, lose, or designedly or through neglect waste the ammunition delivered out to him; or,

Penalty of spoiling, &c. horse, arms, &c.

Art. 45. Who shall sell, lose, or designedly or through neglect lose or injure his horse, or spoil his arms, clothes, accoutrements, or regimental necessaries, shall be liable to such punishment as a court martial shall award, and shall make good the loss or damage sustained, by monthly stoppages, not exceeding half his pay and allowances.

Penalty of not disbursing pay, or making deductions, &c.

Art. 46. Any officer, non-commissioned officer, or soldier, or any other person attached to the army, entrusted with public money for the payment of troops or departments, who shall after receiving orders to disburse the same, make any deduction, or not pay the same according to the prescribed regulations upon the head, shall be fined five times the amount so withheld, to be applied as the Government shall direct, and be further liable to suffer such punishment as by the sentence of a court martial may be awarded.

Penalty of not attending when summoned as a witness before a court martial, or of refusing to be sworn; or giving evidence, shall prevaricate.

Art. 47. Any officer, non-commissioned officer, or soldier, or any person amenable to the articles of war, who, when duly summoned before a court martial, shall not attend, or shall refuse to be sworn, or shall prevaricate in giving evidence, shall be subjected to fine or imprisonment, or such other punishment as a court martial shall award.

Penalty of perjury.

Art. 48. Whatsoever commissioned officer shall be found guilty by a general court martial of perjury, by wilfully and knowingly giving false evidence on oath or solemn declaration on any trial before any other general or inferior court martial, or any military court entitled to administer an oath, shall be dismissed the service, and be further subject to fine to the amount of his arrears of pay and allowances, or imprisonment at the discretion of the court; and every non-commissioned officer or soldier so convicted shall be dismissed the service, and liable to suffer such other punishment as a court martial may award.

Penalty of being absent without leave, and of overstaying the period of leave.

Art. 49. Any officer, non-commissioned officer, or soldier who shall absent himself without leave, or shall without sufficient cause overstay the period for which leave may have been granted him, shall forfeit his pay and allowances for the time he may have been so irregularly absent, and be further liable to be punished by the sentence of a court martial.

Penalty of malingering, &c.

Art. 50. Whatsoever commissioned officer or soldier shall be convicted of feigning, or producing disease or infirmity, shall, if a commissioned officer, be dismissed the service, and if a non-commissioned officer or soldier, shall forfeit all claim to pension on discharge, in addition to such other punishment as may by a court martial be awarded.

Crimes not capital but prejudicial to good order and discipline, cognizable and punishable by courts martial.

Art. 51. All crimes not capital, and all disorders or neglects which officers, non-commissioned officers, and soldiers may be guilty of, to the prejudice of good order and military discipline, though not specified in these rules and articles, are to be taken cognizance of by courts martial, and to be punished according to the nature and degree of the offence.

Section III.

Administration of Justice.

Commander-in-chief to appoint courts martial.

Art. 52. The Commander-in-chief, or commanding officer of the forces for the time being at the presidency to which the prisoner to be tried may belong, is empowered to convene courts martial, and to confirm the sentences passed by such courts,

courts, and to mitigate or remit the punishments awarded, according to his discretion.

Art. 53. The Commander-in-chief, or commanding officer of the forces for the time being, at the presidency to which the prisoner to be tried may belong, may delegate the power of convening general courts martial to any officer commanding a body of troops, and empower such officer to confirm the sentences passed by such courts, or to mitigate or remit the punishment awarded; provided, that when troops of different presidencies are serving together, such delegation shall be made by the Commander-in-chief in India.

Commander-in-chief may delegate the power of convening courts martial.

Art. 54*. A general court martial shall not consist of less than 13 commissioned officers, unless it be held out of the Honourable Company's territories, where a general court martial shall not consist of less than seven.

A general court martial not to consist of less than thirteen commissioned officers.

Art. 55. All the members of a court martial are to preserve order, and in giving their votes are to begin with the youngest; and in all cases where a sentence of death may not be awarded, the decision shall be by the majority of votes, but in case of an equality of votes the decision shall be in favour of the prisoner.

Members voting to begin with the youngest, &c.

Equality of votes.

Art. 56. No sentence of death shall be given against any offender by a court martial, unless two-thirds of the members concur therein.

Concurrence of two-thirds of the members in a sentence of death.

Art. 57. No sentence of a general court martial shall be put in execution until after a report shall have been made of the whole proceedings to the Commander-in-chief at the presidency to which the prisoner may belong, or such other person as shall have been duly authorised to confirm the same, and until his directions shall have been signified thereon.

No sentence to be put in execution until confirmed.

Art. 58*. In cases wherein sentence of death has been awarded by a court martial, the Commander-in-chief, or the officer commanding the forces for the time being at the presidency to which the prisoner may belong, may, instead of causing such sentence to be carried into effect, order the offender to be transported for life, for a certain term of years, or to be imprisoned, with or without hard labour, for life; or a certain term of years, as to the said officer commanding-in-chief may seem meet.

Sentence of death may be commuted to transportation, &c. &c.

Art. 59*. General court martial may award imprisonment, with or without hard labour, in any public prison or other place which the Commander-in-chief at the presidency to which the prisoner may belong shall appoint, on any non-commissioned officer or soldier for misbehaviour or neglect of duty, according to the nature and degree of the offence; and may, in addition to any such punishment, adjudge a forfeiture of all claim to pension on discharge, which might otherwise have accrued to such non-commissioned officer or soldier from the length or nature of his service; provided, that no soldier who has undergone the punishment of imprisonment with hard labour, under the sentence of any court martial, shall be capable of being re-admitted into the ranks, or receiving pension on discharge.

General court martial may award imprisonment, &c. for misbehaviour or neglect of duty.

Art. 60. Trials by court martial may be carried on between the hours of six in the morning and four in the afternoon, and not otherwise, except in cases which may require an immediate example.

Hours of sitting.

Art. 61. At all courts martial the senior officer shall sit as president, without being so appointed by warrant.

Senior officer to preside.

Art. 62. At all regimental or other inferior courts martial an European officer of not less than five years' standing in the service, except in cases where no officer of that standing may be available, shall be appointed to conduct the proceedings, and on the formation of the court shall take and administer the several oaths prescribed in Article 63 of these rules and articles; in case of the unavoidable absence of an interpreter, the superintending officer shall also take the oath prescribed the interpreter in the said article.

At all inferior courts martial an European officer to superintend.

Art. 63. An interpreter, if practicable, shall be appointed to all native courts martial, and on the assembly of the court the judge-advocate or superintending officer shall administer to him the following oath:—

An interpreter to be appointed to all native courts martial.

Oath.

"I, *A. B.*, swear that I will faithfully interpret and translate the proceedings of the court, and that I will not divulge the sentence until it shall have been

Oath to be taken by the interpreter.

No. II.—Part 1.
Articles of War.

been approved or published; and further, that I will not disclose or discover the vote or opinion of any particular member of the court, unless required to give evidence thereof by a court of justice or court martial in due course of law.

"So help me God."

The judge-advocate or superintending officer shall then cause the following declaration to be made by each member, on oath, according to the tenets of his religion:—

"I, *A. B.*, do swear that I will duly administer justice according to the articles of war, without partiality, favour, or affection; and if any doubt shall arise, then according to my conscience, the best of my understanding, and the custom of war in the like cases; and that I will not divulge the sentence of the court until it shall be approved of or published; and further, that I will not disclose or discover the vote or opinion of any particular member of the court, unless required to give evidence thereof by a court of justice or a court martial in due course of law."

The following oath shall then be administered by the interpreter to the judge-advocate or superintending officer:—

Oath to be taken by the judge-advocate or superintending officer.

"I, *A. B.*, do swear that I will not disclose or discover the vote or opinion of any particular member of the court martial, unless required to give evidence thereof by a court of justice or a court martial in due course of law.

"So help me God."

Provided, that it shall not be necessary to re-administer these oaths on the commencement of fresh trials before the same court.

Witnesses to be examined on oath or solemn declaration.

Art. 64. All persons who give evidence at a court martial are to be examined on oath or solemn declaration, according to the tenets of their religion.

Persons not amenable to military authority, how summoned.

Art. 65. In all cases where persons required as witnesses before a court martial may not be amenable to military authority, the judge-advocate or commanding officer shall transmit to the magistrate within whose jurisdiction the witness may reside his summons for the attendance of such person, and the magistrate shall enforce obedience to such summons.

How punished for not attending, or for perjury.

Art. 66. Any person having been so summoned refusing or neglecting to attend, or who attending shall commit wilful and corrupt perjury, shall suffer such penalties as may be in force against a person so offending in any court of civil judicature.

Persons not amenable to the articles to be forwarded, with a written statement, to magistrate of district.

Art. 67. Whosoever, not being amenable to the articles of war, shall refuse to be examined on oath, and the court shall be of opinion that there is no sufficient reason for such refusal, such person shall be forwarded, with a written statement by the judge-advocate or superintending officer, to the civil magistrate of the district, who shall certify the propriety of exempting such witnesses from the oath, or if otherwise, shall proceed in the same manner against him as if such refusal had occurred in the civil court.

Hindoos exempted from taking an oath to subscribe a declaration.

Art. 68. In the case of a witness of the Hindoo persuasion being exempted from taking an oath, the following declaration shall be subscribed by him previously to his deposition:—

Declaration.

"I will faithfully answer according to the truth such questions as may be put to me by the court in the cause now before the court; I will not declare anything not warranted by the truth; if I declare anything not warranted by the truth I shall be deserving of punishment from Ishwar."

Mussulmans exempted from taking an oath to subscribe a declaration.

And in the case of a Mussulman witness so exempted, the following declaration shall be subscribed by him previously to his deposition:—

Declaration.

"I sincerely promise and solemnly declare, in the presence of Almighty God, that I will faithfully and without partiality answer according to the truth any questions that may be put to me by the court respecting the cause now before the court."

After the witness, whether Hindoo or Musulman, has given his deposition, he is to subscribe the following declaration:—

Declaration.

"I solemnly declare in the presence of Almighty God, that I have faithfully,

fully, and without partiality, answered according to the truth the questions put to me by the court respecting the cause now before the court."

Officers, non-commissioned officers, and soldiers, may be placed in arrest or confined.

Art. 69*. Whenever any officer, non-commissioned officer, or soldier, shall commit a crime deserving punishment, he shall by his commanding officer be put in arrest, if an officer, or if a soldier be confined, until he shall be either tried by a court martial, or shall be lawfully discharged by a proper authority; and no officer, or soldier, who shall be put in arrest or confinement, shall continue in his confinement for more than eight days, or until such time as a court martial can be conveniently assembled.

Commissioned officers amenable to general courts martial only.

Art. 70*. No commissioned officers shall be tried by any but a general court martial.

Commissioned officers to be adjudged to suspension or to loss of rank.

Art. 71*. When a commissioned officer shall be convicted before a general court martial of any offence for which he may be sentenced at the discretion of the court, such officer may be adjudged to be suspended from rank, and pay, and allowances for a stated period, or to be placed lower on the list of his rank by an alteration of the date of his commission, thereby losing the corresponding benefit of length of service, and the court shall in every such sentence specify the extent or degree of suspension or reduction which they shall so adjudge.

Commanding officer to assemble inferior courts martial.

Art. 72*. The commanding officer of every station, cantonment, garrison, detachment, or regiment, may assemble courts martial, according to the nature of his command, composed of native commissioned officers, for inquiring into such disputes or criminal matters as may come before them, and for inflicting punishments for small offences; but no sentence shall be carried into effect until the commanding officer shall have confirmed it.

Sentence to be confirmed by the commanding officer previous to execution.

No officer commanding less than four companies to confirm the sentence of a court martial.

Art. 73. No officer in detached command of less than four companies shall carry into execution any punishment awarded by a court martial held by his order, until the sentence shall have been confirmed by the officer commanding the regiment to which the offender belongs, except when an immediate example is necessary.

Inferior courts martial not to consist of less than five officers.

Art. 74*. No regimental or other inferior court martial shall consist of less than five officers, excepting where that number cannot conveniently be assembled, when three shall be sufficient, of whom the senior officer shall be president.

Non-commissioned officers punished with loss of rank, &c. &c.

Art 75. A non-commissioned officer may, by the sentence of a court martial, be reduced to serve as a private soldier, or a havildar may be reduced to the rank of naick, or a non-commissioned officer or soldier may be placed lower in the list of the rank which he holds, with proportionate loss in respect to length of service, such loss to be distinctly specified in the sentence, and to be restorable by the Commander-in-chief.

Imprisonment awardable by inferior court martial.

Art. 76*. A regimental orother inferior court martial may award imprisonment for any period not exceeding four months, and imprisonment with hard labour for any period not exceeding two months.

Stoppages, not exceeding half-pay and allowances, may be awarded by sentence of a court martial.

Art. 77*. It shall be competent to any court martial to sentence any non-commissioned officer or soldier to be put under stoppages, not exceeding half his pay and allowances, until any loss or damage occasioned by his negligence or misconduct be made good, such stoppages to be sentenced in addition to any punishment which the court may be competent to award.

Corporal punishment to be awarded to camp followers only.

Art. 78*. It shall not be competent to any court martial to sentence a non-commissioned officer or soldier to be flogged, but camp followers not above the condition of menial servants or labourers, shall be liable to corporal punishment not exceeding 100 lashes with a cat-of-nine-tails.

Commanding officer may award drill or extra duty.

Art. 79*. In cases of light offences a commanding officer may, without the intervention of a court martial, award drill or extra duty, not exceeding 15 days; and neither of these descriptions of punishment shall be awardable by sentence of a court martial.

Non-commissioned officers, how to be reduced.

Art. 80*. No non-commissioned officer shall be reduced to the ranks but by the sentence of a court martial, or the special order of the Commander-in-chief.

An officer, non-commissioned officer, or soldier, considering

Art. 81*. If any officer, non-commissioned officer, or soldier, shall think himself wronged by his superior or other officer, he is to complain thereof to the com-

himself wronged by his superior, may complain to his commanding officer.

manding officer of his troop or company, by whom, if the grievance be not redressed, such officer, non-commissioned officer, or soldier, may complain to the commanding officer of his regiment, who is hereby required to examine into such complaint or remit it to superior authority, as the circumstances may require; but if the complaint should appear to be frivolous or groundless, the party preferring it shall be liable to be punished by the sentence of a court martial, according to the circumstances of the case.

No person to be tried second time for same offence.

Art. 82*. No person being acquitted or convicted before a court martial of any offence, shall be liable to be tried a second time by the same or any other court martial for the same offence.

Limitation of liability to trial.

Art. 83*. No person shall be liable to be tried or punished for any offence against these rules and articles, which shall appear to have been committed more than three years previous to the order directing the assembly of the court martial whereby he is to be tried, unless the person accused, by reason of his absenting himself, or some other manifest impediment, shall not have been amenable to justice within that period, in which case such person shall be liable to be tried at any time not exceeding two years after the impediment shall cease.

Courts of request.

Art. 84*. Actions of debt, and personal actions against commissioned officers, non-commissioned officers, soldiers, or other persons subject to these rules and articles, shall be cognizable before a court of requests, composed of military officers, and not elsewhere, provided that, within the Company's provinces, the value shall not exceed 200 rupees, which court the commanding officer of any station or cantonment is hereby authorised and empowered to convene; and the said court shall, in all practicable cases, consist of five commissioned officers, and in no instance of less than three, and the president thereof shall not be under the rank of subadar as superintending officer, of not less than five years' standing; and an interpreter to be attached to the court.

Every witness before any such court shall be examined on oath or solemn declaration, the interpreter and superintending officer shall be duly sworn, as is prescribed in Article 63, and the president and members shall take the following oath:—

"I, *A. B.*, swear that I will duly administer justice, according to the evidence in the matter that shall be brought before me."

And it shall be competent for such courts, upon finding any debt or damage due, either to award execution thereof generally, or to direct that the whole or any part thereof shall be stopped, and paid over to the creditors, out of any pay or public money which may be coming to the debtor, after due provision for his necessary subsistence and equipment in the current or any future month; and in case execution shall be awarded generally, the debt, if not paid forthwith, shall be levied by seizure and public sale of such of the debtor's goods as may be found within the camp, garrison, or cantonment, under a written order of the commanding officer, grounded on the judgment of the court; and the goods of the debtor, if found within the limits of the garrison or cantonment to which the debtor shall belong, at any subsequent time, shall be liable to be seized and sold, in satisfaction of any remainder of such debt or damage; and if sufficient goods shall not be found within the limits of the camp, garrison, or cantonment, then any public money, or any sum not exceeding the half-pay accruing to the debtor, shall be stopped in liquidation of such debt or damage; and if such debtor shall not receive pay as an officer, or soldier, or from any public department, he shall be arrested, by like order of the commanding officer, and imprisoned in some convenient place for the space of two months, unless the debt be sooner paid.

Beyond the Company's territories the claim may be limited, but if it exceed 1,000 rupees, the court shall be composed of European officers, but shall not be competent to award imprisonment, in case of non-satisfaction of claim, exceeding six months, or in case of non-satisfaction, combined with fraudulent and dishonest conduct, two years.

Section IV.

Effects of the Dead.

Effects of deceased commissioned officers, non-commissioned officers, soldiers, and public servants.

Art. 85. When any commissioned officer, non-commissioned officer, or soldier, or any person receiving public pay, drawn by an officer in charge of a public department belonging to the army, may die, or be killed in the service, the commanding

manding officer of the regiment or party, or officer in charge of the department, shall secure his effects, and direct an inventory thereof to be taken, a duplicate of which is to be lodged in the office of the adjutant or officer in charge of the department.

Art. 86. If there be no executor on the spot appointed by the deceased, the effects are to be publicly sold, the commanding officer of the regiment or party, or officer in charge of the department, after discharging the debts of the deceased, viz. the expense of funeral ceremonies, his debts in camp or quarters, and regimental debts of every description, shall account for the residue to the heir or heirs declared by will, whether written or verbal, or in failure of such, to the legal representative of the deceased; and in the event of no executor, heir, or other representative of the deceased attending and establishing his claim within 12 months from the date of the casualty, the amount in the hands of the officer having charge of the estate is to be remitted to the general treasury at the presidency.

Rules to be observed in the disposal of the effects of the deceased, if no executor be on the spot.

Section V.

Relating to the foregoing Articles.

Art. 87. All persons serving with any part of the army and receiving public pay drawn by any officer in charge of a public department appertaining to the army; and all suttlers, camp followers, and other persons attached to the army or gaining or seeking a livelihood in a military bazar or cantonment, shall be subject to these rules and articles, and amenable to trial by court martial, according to the rules and discipline of war; provided that no person above the condition of menial servant or labourer shall be liable to be sentenced to corporal punishment.

All persons serving with any part of the army, &c. are to be governed by these articles, and be amenable to trial by courts martial.

Art. 88*. Whenever any body of the troops shall be employed where there is no court of civil judicature, any officer, soldier, or other person amenable to military law, accused of murder, robbery, or other serious offences against person or property, shall be tried by a general court martial, and punished with death, or otherwise, according to law.

When troops serving where there is no court of civil judicature, serious offences may be tried by general court martial.

Art. 89*. In any place out of the British territories, or of states in alliance with the British Government, where the troops shall be in military possession, the officer commanding any division, detachment, or distinct party, may assemble general courts martial, which shall consist of not less than seven officers at the least, for the trial of any person under his command accused of any crime committed against the property or person of any inhabitant or resident at such place, or of having committed violence or any other offence; and every such court martial shall have power to adjudge any person so accused to suffer the punishment herein prescribed for the crime or offence charged, but no sentence passed by such court shall be executed until confirmed by the officer commanding the troops on service to which such division, detachment, or party shall belong.

General courts martial may be assembled for the trial of any person accused of any crime committed against the property, &c. of an inhabitant of any place out of the British territories, where the troops shall be in military possession, &c.

Art. 90. And in all places within the Company's territories where martial law shall have been by due authority proclaimed, the officer commanding the division, detachment, or distinct party, may assemble general courts martial, which shall consist of not less than seven officers at the least, for the trial of any person owing allegiance to the British Government, who may be taken in arms against the said Government, or maliciously attacking or injuring the persons or properties of any loyal subject, or in any other manner assisting in rebellion; and it shall be lawful for any such court martial to adjudge any person so found guilty to suffer death, by being hanged by the neck until dead, or to be otherwise punished as to such court martial shall seem expedient; but no sentence shall be executed until confirmed by the said commanding officer.

And the commanding officer of every such division, detachment, or distinct party is hereby authorised to arrest and detain in custody all persons engaged in such rebellion or suspected thereof, and to cause all persons so arrested and detained to be brought to trial, and to execute the sentence of all such courts martial, whether of death or otherwise, and to do all other acts necessary for such several purposes.

General courts martial may be assembled for the trial of persons owing allegiance to the British Government, who may be taken in arms against the said Government, &c.

Art. 91*. Every court martial, as constituted in the preceding article, shall have power to try any person owing allegiance to the government, who shall be taken in

Persons aiding, &c. the enemy, amenable to court martial, and liable to suffer death.

No. II.—Part 1.
Articles of War.

in arms against the State, or otherwise aiding and abetting the enemy; and such persons so found guilty shall be liable to the punishment of death, by being hanged by the neck until dead, or to transportation: but no sentence passed by such court shall be executed until confirmed by the officer commanding the troops on service to which such division, detachment, or party shall belong.

Sentence not to be executed until confirmed by the officer commmanding.

Art. 92. No person amenable to these rules and articles shall be adjudged to suffer death or transportation except for such crimes as are herein expressly declared so punishable; neither shall any such sentence of death or transportation in any case be awarded by any court martial other than a general court martial.

Punishment extending to life or transportation to be restricted to crimes expressly so declared in these Rules and Articles.

Art. 93. Whenever the sentence of a general court martial shall adjudge transportation, or sentence of death shall be commuted by competent authority to transportation, the Nizamut Adawlut shall give effect to such sentence or commuted sentence, on the sentence being certified to the court by the adjutant-general, or his deputy, under the authority of the Commander-in-chief.

Nizamut Adawlut to give effect to sentences of transportation.

Art. 94. Whenever any sentence of a court martial shall adjudge imprisonment, or imprisonment with labour, it shall be the duty of any magistrate to give force to such sentences on the offender sentenced to imprisonment being delivered to his custody, and on being furnished with a copy of the sentence by the general or other officer commanding the division or district within which the trial is held.

Magistrate to give effect to sentences of imprisonment by military authority.

Art. 95*. In every case wherein a fine or pecuniary compensation shall be adjudged by a court martial, any arrears of pay or public money due to the offender, or any property belonging to him in camp, garrison, or cantonment, shall be available, under an order from the officer commanding, for the payment of the amount so adjudged.

When a fine is adjudged by a court martial, the pay or property, &c. of the offender within camp, &c. shall be available.

Art. 96*. Any commissioned officer, non-commissioned officer, or soldier under arrest or in confinement, under a charge of any offence, shall not be entitled to receive his full pay and allowances from the day of his commitment till the day of his return to duty in his regiment, or to the party he shall be ordered to join, but shall be subsisted at a rate proportioned to his rank; and if he be acquitted, he shall receive the balance of all arrears of pay and allowances accruing during the time of his confinement.

Commissioned, non-commissioned officer or soldier confined on a criminal charge, not entitled to full pay, &c. during his absence from his regiment, &c.

Art. 97*. Any officer, non-commissioned officer, or soldier who shall be taken prisoner by the enemy, shall forfeit all claim to pay and allowances during the period of his remaining a prisoner, and until he shall again return to the service; when, if he can establish before a court martial that he was unavoidably taken prisoner in the course of service, and that he hath not served with or assisted the enemy, and that he hath returned as soon as possible to the service, he shall be entitled to receive either the whole or such portion of his arrears of pay and allowances as the court martial shall award.

Any officer, non-commissioned officer or soldier made prisoner, to forfeit all claim to pay and allowances.

Art. 98*. The effects of deserters are to be publicly sold, and the proceeds, after payment of regimental debts, remitted, by the officer commanding the corps to which the deserter belongs, to the general treasury at the presidency.

Effects of deserters.

Art. 99. Persons professing the Christian religion, wherever born, or of whatever parentage, shall not be amenable to these rules and articles, but shall be subject to the Mutiny Acts and Articles of War in force from time to time for His Majesty's forces, or for the Honourable Company's troops, according to the nature of their services.

Christians not amenable to these Rules and Articles.

Art. 100. These rules and articles are to be translated into the several languages of the different presidencies, and the first, second, and fourth sections, together with the following articles, which are marked with asterisks, viz. 54. 58, 59. 69, 70, 71, 72, 74. 76, 77, 78, 79, 80, 81, 82, 83, 84. 88, 89. 91. 95, 96, 97, 98, are to be read once in six months at the head of every regiment, troop, or company mustered in the service.

The Rules and Articles to be published.

No. II.—Part 1.
Articles of War.

(No. 343.)

From *W. H. Macnaghten*, Esq. Secretary to the Government of India, to *J. P. Grant*, Esq. Officiating Secretary to the Law Commission.

Legis. Cons. 26 February 1838. No. 8.

Sir,

I AM directed by the Right honourable the Governor-general in Council to forward to you, for the purpose of being submitted to the Law Commission, the accompanying extract from the Military Department, and the rules which accompanied it, for the better government of the native officers and soldiers in the armies of the East India Company.

Legislative.
Extract Military Department, 18 Sept. 1837, No. 260.
Minute by the Governor-general, 27 January 1837.
Minute by Colonel Monson, 4 April 1837.
Minute by Mr. Shakespear, 19 June 1837.
Letter from the Assistant Adjutant-general to Secretary to Government, Military Department, 13 Jan. 1837, No. 18, Rules and Articles.

2. The object, I am desired to state, in sending these papers is to ascertain whether the proposed rules contain anything, in the opinion of the Commission, (and chiefly as regards their penal provisions,) which is at variance with the general principles of jurisprudence, so far as the Commission may be able to judge, without reference of course to military considerations.

3. It will be proper, however, that the Law Commission should take into consideration any of the views expressed in the minutes of the Governor-general in Council as relating to penal questions or points of law, as these views may appear to differ from the draft of the law, and whether there appear to be any objections to the plan therein adopted of numbering the different sections, without distinguishing, as usual, the military regulations from the penal enactments or articles of war.

4. You are requested to return the original papers herewith sent, with your reply.

I have, &c.

Council Chamber,
25 September 1837.

(signed) *W. H. Macnaghten*,
Secretary to the Government of India.

(No. 90.)

From *J. P. Grant*, Esq. Officiating Secretary, Indian Law Commission, to *R. D. Mangles*, Esq. Officiating Secretary to the Government of India, Legislative Department.

Legis. Cons. 26 February 1838. No. 9.

Sir,

I AM directed by the Law Commisioners to convey to you the observations which they have to offer on the proposed articles of war for the native forces of the East India Company, which were referred to them by Mr. Secretary Macnaghten's letter of the 25th of September last.

2. I am desired first to submit those remarks of the Commissioners which are of a general nature, and then those which relate to particular provisions in the proposed new body of military law.

3. The Commissioners observe, that in applying the general principles of jurisprudence to the making of laws for the government of armies, the peculiar objects of military discipline cannot safely be for a moment left out of consideration. The penal provisions of the proposed articles of war, must be considered with reference to those peculiar objects, to the peculiar duties which, for the sake of those objects, are imposed on soldiers, and to the peculiar circumstances in which, from the nature of military service, soldiers are liable to be placed; so considered, those penal provisions do not appear to the Commissioners to be in their general character at variance with the principles of jurisprudence. They are such as it has usually been judged necessary to employ for the purpose of maintaining order and discipline in armies. Any parts of them of which the Commissioners see reason to question the propriety, will be pointed out in a subsequent part of this letter.

4. The Commissioners doubt whether the arrangement of the proposed articles of war is that which, on the whole, it is advisable to adopt. Those articles are arranged in the same manner as the general articles of war for the Queen's forces. There are, however, separate articles of war made by the Crown, under the authority of the Imperial Legislature, for the East India Company's European troops, and

See Act Geo. 4, c. 81, and the Rules and Articles

made under authority thereof. *See* Articles for the Company's European troops, sec. 21, Article 6; and Articles for the Queen's forces, No. 143.

and having also the force of law in the government of the Queen's forces in India, in all respects, in which they are not at all at variance with the general articles of war for the Queen's forces. The arrangement of those separate articles for the European troops in India is different from that followed in the articles for the royal forces throughout the empire, and the government of India is not competent to repeal, or in any way alter those separate articles.

5. The armies of Madras and Bombay are governed by articles of war, which were enacted by the governments of those presidencies, under authority given, and in the manner prescribed by Act of Parliament, and which are arranged in the same way as the articles of war for the Company's European troops. It would seem that no articles of war have ever been enacted in the prescribed manner for the army of Bengal. What, in a letter to my address, dated the 11th of last month, from the Officiating Secretary to the government of India in the military department, is described as a copy of the existing rules and articles of war for the native troops of the Bengal army, appears to be only a copy, together with a Persian and Hindoostanee version, of a selection of such of the rules contained in a former set of articles of war for the Company's European troops, as it was, at a period now remote, deemed proper to apply to the native troops.

6. The Law Commissioners submit, that it is a question which may be deserving of the consideration of government, whether in any new articles of war which it may be deemed proper to enact for the native forces, it will not be advisable to follow, as is done in the existing Madras and Bombay articles of war, the arrangement observed in the articles of war for the Company's European troops.

7. There is another question also relating to arrangement, though not to the arrangement among themselves of the rules composing the proposed articles of war, which, in the opinion of the Commissioners, deserves to be considered by the government. It is, whether it be advisable to embody in articles of war, as is done in the proposed new articles, those provisions of law which relate to military courts of requests, and those which authorize and regulate, under certain circumstances, the trial by courts martial of offences against the ordinary criminal law. The Law Commissioners think that it would be better to keep the provisions of law upon both of these subjects separate from the articles of war. That code which applies to a soldier, exclusively as a soldier, ought, in their opinion, to be kept distinct from rules relating to offences which he commits, and contracts which he makes, not as a soldier, but as a citizen.

8. I now proceed to state the observations which the Commissioners see occasion to offer on particular provisions in the proposed body of law.

9. Article 3 empowers the Commander-in-chief "to dismiss commissioned officers by an order." Hitherto this power has been held only by government. The Law Commissioners observe, that the propriety of the proposed change is questioned by the Right hon. the Governor-general, and by other members of the government. Their own opinion they do not hesitate to say, is strongly against the change. The commissions held by the native officers of the Bengal army, are given by the government of India; those held by the native officers of the armies of Fort St. George and Bombay, are given by the governments of those presidencies. The Law Commissioners think that there would be an obviously objectionable anomaly in the system of Indian administration, if any functionary, however high, not himself invested with the powers of a government, could by a mere order deprive an officer of a commission given by a government. To avoid the creation, or the continuance of this anomaly, by changing the authority which grants the commissions, so that no native officer should receive a commission from the government of India, or even from any of the subordinate governments, is a course of proceeding against which the Law Commissioners are sure that they need employ no arguments; but that the proposed provision would create an unseemly anomaly, is far from being, in the opinion of the Commissioners, the most weighty objections to which it is liable; on grounds of policy, it seems to them highly expedient that there should be, as there now are, classes of native officers in the armies of the East India Company, who cannot be dismissed from the service otherwise than by the sentence of a court martial, except in cases which are deemed such as to call for a special exercise of the authority of government.

10. Besides that the substance of this article is thus objectionable, in the opinion of the Commissioners, the wording of it appears to them to be wanting in precision. It is not clear whether by the words "the Commander-in-chief," is meant, as regards

regards the armies of Madras and Bombay, the Commander-in-chief of the army of the presidency, or the Commander-in-chief of all the Company's forces.

11. Under Article 20, an offender may be sentenced to transportation for life, or to imprisonment for a term which must not exceed four years. This limiting of the imprisonment of four years, while the transportation is allowed to be for life, is in accordance with the course usually followed in the legislation of England. But the feelings of the people with regard to transportation and to imprisonment are widely different in England and in India. A sentence of imprisonment for life is practically unknown in England, and would there be regarded as far more severe than a sentence of transportation for life. But in India the punishment of imprisonment for life, though it may be true that it would, in most cases, be attended with greater sufferings, is not generally looked upon as more severe, but rather as less severe than transportation for life. And in India, when the law makes an offence punishable with transportation for life, it usually makes that offence also punishable with imprisonment for life. The Law Commissioners think it advisable that the penal provisions of articles of war for the native troops should be so framed as in this respect to accord with the other penal laws of this country, that is to say, should be so framed as to make liability to imprisonment for life accompany liability to transportation for life. This, I am desired to observe, is done with respect to a great variety of offences, in provisions of the proposed articles of war preceding the one which has given occasion for these remarks.

12. The Commissioners, however, do not recommend that the offence defined in this article should be made punishable with imprisonment for life; they would rather suggest that it should not be made punishable with transportation. The fittest course in their opinion is, to provide by the articles of war the same punishment for that offence which is provided by the general criminal law for the like embezzlement by public servants.

13. In Article 30 are these words: "shall be punishable according to the sentence of a general or other court martial." In other articles, as well as in this one, it seems to be understood that there are certain punishments which a court martial is competent to inflict for offences for which specific punishments are not provided by the articles of war; but what punishments are within such competency does not appear to be anywhere stated. It seems to the Law Commissioners very desirable that any new code of military law which may be enacted for the native troops, should fully and distinctly specify the punishments falling within such competency in respect of each description of court martial.

14. Article 38 provides that for contempts committed in presence of a court martial, persons amenable to the article of war shall be punished by another court martial; and persons not amenable to such articles shall be transmitted to the civil magistrate, who shall proceed against them as if the offence had occurred in his own court.

15. The provisions relating to persons described as not amenable to the articles of war, and proceedings to be held in courts not military, if they are to be enacted at all, may, the Law Commissioners think, be enacted with more propriety in a separate law than in articles of war; and it will at any rate be necessary to define more precisely the courts to which it is intended to give the cognizance of charges of the kind stated against such persons. The Commissioners observe that the articles of war for the Company's European troops, the articles of war for the Madras army, and the articles of war for the Bombay army contain the following provision: "No person whatever shall use menacing words, signs, or gestures in the presence of a court martial then sitting, or shall cause any disorder or riot so as to disturb their proceedings, on the penalty of being punished at the discretion of the said court martial." The articles of war for the Royal forces contain the same provision, with only a slight difference in the wording.

Sec. 14, Art. 19.

Madras Reg. V. of 1827; sec. 9, Act 19.
Bombay Reg. II. of 1829, sec. 9, Act 20.

16. Article 47 of the proposed law provides for the punishment by courts martial of persons who, when duly summoned before a court martial, "shall not attend, or shall refuse to be sworn, or shall prevaricate in giving evidence;" there is no similar provision in the articles of war for the Royal forces, or in those for the Company's European troops, or in those for either of the native armies of Madras and Bombay. The Commissioners have further to observe on this provision, that in so far as it relates to prevarication, it is open to the objections to treating prevarication as a separate offence from perjury on the one hand, and refusal to answer on the other, which were stated on the part of the Commissioners,

No. II.—Part 1.

Articles of War.

in my letter to Mr. Secretary Macnaghten, dated the 9th of September 1837, No. 67.

17. Article 53 authorises the Commander-in-chief, or commanding officer for the time being at any presidency, to delegate the power of convening courts martial to any officer commanding a body of troops, with the proviso, "that when troops of different presidencies are serving together, such delegation shall be made by the Commander-in-chief in India." The Law Commissioners observe, that the case of there being no "Commander-in-chief of all the Company's forces in India," a case by no means of rare occurrence, appears to have been here over looked.

18. Article 84 relates to military courts of request; it provides that "actions of debt and personal actions against military persons, shall be cognizable before such courts, and not elsewhere, provided that within the Company's territories the value litigated shall not exceed 200 rupees."

19. The Law Commissioners beg leave to draw the attention of the Government to an important exception, which is made in a corresponding provision, as regards actions of debt in the Madras Regulations. The exception is of such actions "as may be cognizable by the commissariat officer in charge of the police;" officers of the commissariat being at certain stations under that presidency placed in charge of the police, and invested with judicial powers. This exception, the Commissioners think, ought to be introduced into the article under remark; and a similar provision seems to be required with respect to the jurisdiction which, in the presidency of Bombay, the superintendent of military bazars has in cases of small debts. The Commissioners further observe, that the Madras rules provide absolutely that the value litigated shall not exceed 200 rupees, while by the article under remark that limitation is confined to the case of litigation "within the Company's provinces." The Commissioners think that even out of the Company's territories there ought to be some such limitation.

Madras Reg. V. sec. 12, Act 7.

20. Article 88 provides for the trial by courts martial, under certain circumstances, of persons charged with offences against the ordinary criminal law. The Commissioners would suggest that in this article, for the words, "where there is no court of civil judicature," there should be substituted the words "beyond the limits of the East India Company's territories;" and for the words "shall be tried," the words "shall be liable to be tried." The Commissioners also suggest that the words "with death or otherwise," should be omitted.

21. Article 90 relates to the powers of courts martial held for the prompt administration of criminal justice in districts which are the seat of rebellion, and where martial law has been proclaimed. According to the words of this article, strictly construed, any person owing allegiance to the British Government, is in such a state of things liable to be hanged, if he have been taken maliciously injuring any property belonging to any loyal subject, however clear the offender may be from any concern in the rebellion. This, it may be gathered from the context, is not intended; but it is desirable that the article should be so worded as to describe correctly the offences for the punishing of which it is meant to provide by it.

22. Article 92 contains the following provision: "No person amenable to these rules and articles of war shall be adjudged to suffer death or transportation, except for such crimes as are herein expressly declared so punishable." That no person ought to be adjudged to suffer death or transportation for any offence against military law, unless that law have expressly provided such punishment for that offence, admits of no question; but it is to be remembered that under Article 88, persons amenable to the articles of war will, under certain circumstances, be liable to be tried by courts martial for offences for which punishments are provided, not by the articles of war, but by ordinary criminal law, what punishment they shall be liable to be adjudged to suffer. For this reason, as well as on account of an ambiguity in the meaning of the expression as it stands, the Commissioners think that the concluding part of Article 88 would be improved by omitting, as already suggested, the words "with death or otherwise." And at any rate, if Article 88 be retained, they are of opinion that the provision above quoted from Article 92 ought to be modified as to except trials under Article 88.

23. Article 99 is as follows: "Persons professing the Christian religion, wherever born, or of whatever parentage, shall not be amenable to these rules and articles, but shall be subject to the Mutiny Acts and Articles of War in force from time to time for His Majesty's forces, or for the Honourable Company's troops, according

according to the nature of their service." This distinction between Christians and men of other religions, the Commissioners consider as exceedingly objectionable in principle, and as likely, if it were made law and acted on, to produce great evils in practice. The provision has probably been inserted under an impression that in the Company's armies there are no native Christian soldiers mingled with other native soldiers, and of precisely the same race and colour. Even if this were the case, the Commissioners would think the proposed distinction improper and dangerous; but the fact is, that at least in the native armies of Madras and Bombay, there are such native Christian soldiers mingled with other native soldiers. The distinction would, on this account, be the more improper and the more dangerous. The Commissioners are aware that it is considered by some authorities as a distinction made by the existing law. The Commissioners themselves think that opinion altogether groundless. Their sentiments on it are more fully submitted in my separate letter of this date, No. 91, in reply to Mr. Secretary Macnaghten's letter of the 9th October last. In reference to the concluding part of the article under remark, the Commissioners think it can hardly be necessary for them to observe that it is not within the competency of the Legislative Government of India either to restrict or to extend the classes of persons subject to the Mutiny Acts or Articles of War for the Queen's troops or the Company's European troops.

24. The foregoing observations are all which, with reference to the tenor of the instructions given them by the Government, the Commissioners see occasion to submit on the proposed new articles of war. To prevent misapprehension, however, they desire me to explain that they have not understood it to be the intention of Government that they should thoroughly revise those articles, in respect either of the substance or the language, and that they are very far from considering themselves as having executed such a revision.

25. The original papers which accompanied your letter are herewith returned.

I have, &c.
(signed) *J. P. Grant*,
Officiating Secretary.

Indian Law Commission,
12 January 1838.

(No. 98.)

From *J. P. Grant*, Esq. Officiating Secretary to the Indian Law Commission, to *R. D. Mangles*, Esq. Officiating Secretary to the Government of India, Legislative Department.

Legis. Cons.
26 Feb. 1838.
No. 10.

Sir,

With reference to the 19th paragraph of my letter of the 12th ult. on the subject of the proposed articles of war for the Honourable Company's native armies, I am directed by the Law Commissioners to address you for the purpose of pointing out to the Government certain provisions of the Madras Regulations, which from inadvertence were not taken notice of in that communication. Those provisions were overlooked, from the circumstance that they are not contained in the Regulation (V. of 1827,) which formally establishes articles of war for the Madras native troops, but in a subsequent enactment, Regulation VII. of 1832, at sections 21, 41, and 42.

2. Section 21 raises the limit of the value which may be litigated before military courts of the description referred to in the 19th paragraph of my letter of the 12th ult. from 200 to 400 rupees; but adheres to the principle of limiting that value absolutely, wherever the court may be held. The only alteration therefore which is required to make the statement in that paragraph quite correct, is the substituting of 400 for 200.

3. But by sections 41 and 42, other means are provided for the trial and decision of suits beyond the frontier, and under the provisions of the latter of these sections, suits for any sum, however large, may be decided in such situations. The Commissioners think it may be of advantage that the attention of the Government should be drawn to these provisions before making so great an alteration in this part of the existing law as would be effected, in regard to the troops of the Madras presidency, by the enacting of the proposed new articles of war; they also think that if, on the other hand, the Government should determine in

No. II.—Part 1.
Articles of War.

making new articles of war for all the native armies, to fix a limit even beyond the frontier to the value liable to be sued for in native military courts, those provisions of the Madras Regulations will deserve to be borne in mind when the question what means ought to be provided for deciding disputes which arise beyond the frontier, respecting an amount or value exceeding that limit, is under consideration.

I have, &c.
(signed) *J. P. Grant*,
Officiating Secretary.

Indian Law Commission,
12 February 1838.

Legis. Cons. 26 February 1838. No. 11. Revision of the military code administering oath.

MINUTE by the Hon. *H. Shakespear*, Esq. dated the 27th February 1838.

THE Legislative Council having come to the determination, on a revision of the military code, that it is expedient to leave it optional with a witness examined before a court martial to make oath or not to the truth of his deposition, it being explained to him that in case of wilful falsehood he will render himself liable to the penalties of perjury, it is necessary for me, consistently with the opinion I have always held, and continue to hold, to record my dissent from the proposed rule.

The question has been so often and so fully discussed, and on every successive discussion the general abolition of oaths in judicial proceedings has been so strongly opposed, that it is unnecessary here to repeat the argument against it. I cannot help thinking, however, that if the measure is a wise one, it should be openly and broadly asserted, and not left to the nominal option of the witness, who will, of course, on every occasion avoid an obligation to which he is not required to subject himself.

(signed) *H. Shakespear.*

Legis. Cons. 26 February 1838. No. 12.

FORT WILLIAM, Legislative Department, 26 February 1838.

(No. 10.)

READ again extract from Military Department, dated 18th Sept. 1837, with its enclosures; read also letters from officiating secretary to the Indian Law Commissioners, dated the 12th ultimo and 12th instant.

Resolution.

The Honourable the President of the Council of India in Council having had under consideration the papers above specified, and having reverted to the partial discussion of the subject which took place when the draft of the new rules and articles was first transmitted from the Military Department, proceeds to record the following resolution:—

Letter of Law Commrs. paras. 4—6.

2. His Honor in Council concurs with the Law Commissioners, that in the new articles of war for the native forces, it will be advisable to follow, as is done in the existing Madras and Bombay articles of war, the arrangement observed in the articles of war for the Company's European troops.

Para. 7.

3. The President in Council is also of opinion with the Law Commissioners, that those provisions of law which relate to military courts of request, and those which authorise and regulate, under certain circumstances, the trial by courts martial of offenders against the ordinary criminal law, ought not to be embodied in the new articles of war, it being clear that "that code, which applies to a soldier exclusively as a soldier, ought to be kept distinct from rules relating to offences which he commits, and contracts which he makes, not as a soldier, but as a citizen."

Paras. 9 and 10, Article 3.

4. The President in Council is of opinion, that the power of depriving an officer of a commission given by the Government, cannot with propriety be delegated to any functionary subordinate to the Government; that power ought to be exercised by the Government itself only upon extraordinary occasions; nor can his Honor in Council consent to transfer it to other hands than those of the Government, constituted as it is to control and protect the Indian army.

5. The Government would also reserve to itself the sole power of dismissing non-commissioned officers and soldiers otherwise than by the sentence of a court martial (which can only be necessary in extraordinary cases) at the representation of the Commander-in-chief.

6. His

6. His Honor in Council concurs generally with the remarks of the Law Commissioners as contained in these paragraphs; he thinks that the words "to be transported for life, or for a term of years," should be omitted, and that, in order to assimilate the punishment provided by the articles of war for embezzlement with that which will probably be provided by the general criminal law for embezzlement of a like nature by public servants, the words "for a term which may extend to three years" should be substituted for the words "not exceeding four years." Paras. 11 and 12, Article 20. *See* sect. 387 of the proposed penal code.

7. The President in Council entirely agrees with the Law Commissioners in opinion, that the new code of military law which it is proposed to enact for the native troops should fully and distinctly specify the punishments which each description of court martial is competent to inflict. Para. 13, Art. 30.

8. His Honor in Council is disposed to prefer the terms of the corresponding article in the articles of war for the Madras and Bombay armies respectively, as quoted on the margin, to that entered as Article 38 in the proposed new articles. If the military authorities think that contempts, other than those which may appear to be included in the article transcribed on the margin, should be provided for, they ought to be specifically added to the enumeration. Paras. 14 and 15, Art. 38.

"No person whatever shall use menacing words signs, or gestures in the presence of a court martial then sitting, or shall cause any disorder or riot so as to disturb their proceedings, on the penalty of being punished at the discretion of the said court martial."

9. For this article, the President in Council, concurring in the objections stated by the Law Commissioners "to treating prevarication as a separate offence from perjury on the one hand, and refusal to answer on the other," and being also of opinion that refusal to be sworn ought not to be treated as an offence, would substitute an article to the following effect: "Any officer, non-commissioned officer, or soldier, or any person amenable to the articles of war, who, when duly summoned before a court martial should not attend, or shall refuse to answer, shall be subjected to fine or imprisonment, or such other punishment as a court martial shall award. Any person as above objecting to take an oath, shall be examined on solemn declaration, but shall be liable to the penalty of perjury for saying anything under that sanction which, if he had taken an oath, would have rendered him so liable." Para. 16, Art. 47.

10. Due provision will be made in the Military Department for supplying the omission pointed out by the Law Commissioners in this paragraph. Para. 17, Art. 53.

11. His Honor in Council is of opinion that five officers ought to be declared sufficient to compose a general court martial in the Straits of Malacca, or elsewhere beyond seas. Article 54.

12. The President in Council entertains some doubt whether these articles are sufficiently explicit, and the question occurs whether a legal or simple majority be meant; that is, whether the majority is to be calculated from the number of members originally assembled, or from the number to which they may be reduced in the course of a trial. Articles 55 and 56.

13. His Honor in Council is of opinion that the oaths mentioned in these articles may be dispensed with, in the spirit of Act No. XXI. of 1837, and that the articles should be remodelled accordingly. Articles 62 and 63.

14. In this article, the double meaning of the word "evidence" might advantageously be avoided, by substituting for it the word "witness." Article 65.

15. For this article, the President in Council would substitute, "Any person, not military, having been so summoned, refusing or neglecting to attend, or who attending shall give such testimony as, if given in the civil court, would render him guilty of wilful and corrupt perjury, shall be liable to trial in a civil court, and on conviction shall suffer such penalties as may be in force against a person offending in any of the modes above specified in any civil court. Article 66.

"Any military person offending in any of the above modes may be tried by the same court martial, or another to be assembled for the purpose."

16. In this article, his Honor in Council would insert, after the words "four companies," the words, "or detachments numerically equal to four companies;" because it is understood not to be unusual for a field officer of artillery to be in command of several troops and companies belonging to several different corps of horse and foot artillery. Article 73.

No. II.—Part 1.
Articles of War.

Article 76. 17. The President in Council would add to this article, "and solitary confinement for any period not exceeding 30 weeks, and loss of claim to additional pay for length of service."

Article 77. 18. His Honor in Council is of opinion that parties losing or injuring their arms by accident ought to be allowed the option of replacing or repairing them, without being brought to trial.

Article 78. *See* also proviso to Article 87. 19. The punishment of flogging having been abolished in the ranks of the native army, and in the criminal courts under the presidency of Fort William, for the worst offences committed by the worst classes of society, and as it is proposed to abolish it throughout the Company's territories in India, when a general penal code, founded on that submitted by the Law Commissioners, is introduced, the President in Council cannot sanction a law authorizing its infliction upon camp followers, until the most convincing proof be afforded that discipline cannot be preserved by any other mode of punishment.

Article 79. 20. His Honor in Council is of opinion that commanding officers should be empowered to inflict specified minor punishments, besides extra drill and extra duty, such as confinement in the guard, or other authorized place, not exceeding three days, without the intervention of courts martial.

Article 80. 21. The President in Council is of opinion that the power of reducing non-commissioned officers to the ranks should be vested solely in courts martial.

Letter of Law Commrs. paras. 18 and 19, Art. 84. 22. This article should be modified to meet the suggestion of the Law Commissioners contained in the first part of paragraph 19. The President in Council is of opinion that the maximum amount of debt cognizable by courts of requests within the Company's provinces should be raised from 200 rupees (as proposed in the article) to 400 rupees, as appears, from the Law Commissioners' letter of the 12th instant, to have been already done at Madras, by Sect. 21, Regulation VII. of 1832. Of the code of that presidency, his Honor in Council does not think that there ought to be any limitation in amount out of the Company's territories.

Letter of Law Commrs. para. 20, Art. 88. 23. Having considered the suggestions of the Law Commissioners upon this article, the President in Council is of opinion that it requires only the following modifications, viz. the insertion of the word "British" before "court of civil judicature;" and the substitution of the words, "shall be liable to be tried," for "shall be tried."

Para. 21, Art. 90. 24. The wording of this article ought to be amended in the manner proposed by the Law Commissioners in the paragraph cited on the margin.

Para. 22, Art. 92. *See* para. 3 of this Resolution. 25. The anomaly pointed out by the Law Commissioners in the latter end of this paragraph, will be got rid of, the President in Council remarks, by the adoption of their suggestion, that those provisions of law which authorize and regulate, under certain circumstances, the trial by courts martial of offenders against the ordinary criminal law, should be separated from those articles which are strictly articles of war; the word "specifically" should be substituted for "expressly."

Article 96. 26. His Honor in Council has some doubts in regard to the expediency of this article, as it relates to privates, specially under the presidency of Madras, where the sepoys are usually accompanied by their families, and are understood seldom to live on less than their full pay.

Article 97. 27. The President in Council does not think that any discretion should be left to the court martial, under the circumstances for which this article provides; if the prisoner satisfactorily prove all the points required for his justification, he is equitably entitled to the whole of his arrears; if otherwise, he ought to forfeit the whole.

Letter of Law Commrs. para. 23, Article 99. 28. For this article, for the obvious reasons stated by the Law Commissioners, his Honor in Council would substitute (though the new article ought, probably, to be inserted at or near the commencement of the rules), "That all persons serving with native corps, except such persons as are amenable to the rules and articles of war for the better government of the officers and soldiers in the service of the East India Company, made by the Crown, under the authority of the Imperial Legislature, shall be amenable to these rules and articles."

Order. Ordered, that a copy of this resolution, and of the correspondence with the Law Commissioners,

Commissioners, be transmitted to the Military Department, in reply to the extract received from that department, under date the 18th September 1837; and in order that measures may there be taken for remodelling the rules and articles in conformity with the sentiments of the Legislative Council expressed in this Resolution, ordered also, that when the rules and articles are again, after being so remodelled, forwarded to this department, they be accompanied by a memorandum exhibiting all the points of difference between the proposed rules and articles, and those for which it is intended that they should be substituted, and also indicating what matter is altogether new.

Ordered, that the original papers be returned.

(No. 358.)

EXTRACT from the Proceedings of the Right honourable the Governor-general of India in Council in the Military Department, dated the 25th September 1837.

Legis. Cons. 26 Feb. 1838. No. 13.

READ a letter from the adjutant-general of the army, No. 278, under date the 16th ultimo, bringing to notice, in continuation of former correspondence, additional references that have been made to his Excellency the Commander-in-chief, relative to the punishment of Christian drummers and musicians attached to native corps, and conveying his Excellency's request to be informed in what manner this class of soldiers is to be dealt with.

Read also the adjutant-general's letter, No. 116, dated the 13th of April last.

Resolved, that the aforementioned letters from the adjutant-general of the army, with a copy of the answer thereto given, and the whole of the previous correspondence, be sent to the Legislative Department for consideration, with reference to the draft of rules and articles for the native soldiery, transferred on the 18th instant to that department, and to the circumstance noticed by the judge-advocate-general in his letters, Nos. 563 and 322, dated respectively the 2d November 1835 and 19th December 1836, viz. that the Christian drummers attached to native corps may or may not be British subjects.

Cons. 19 Sept. 1836, Nos. 14–18. Cons. 5 Dec. 1836, Nos. 22–25. 28–31. Cons. 9 Jan. 1837, Nos. 10, 11. 63–65. 69–71.

Ordered, that a copy of the foregoing Resolution, with all the papers therein referred to, be sent to the Legislative Department for consideration and the necessary orders.

Ordered, that the correspondence in original be returned to this department.

(True extract.)
(signed) *W. Casement*, M. G.
Secretary to the Government of India, Military Department.

(No. 357.)

From *W. Casement*, Major-general, Secretary to the Government of India, Military Department, to the Adjutant-general of the Army, Head Quarters.

Legis. Cons. 26 Feb. 1838. No. 14.

Sir,

I AM directed to acknowledge the receipt of your letters, Nos. 116 and 278, under dates the 13th of April and 16th ultimo, and to state in reply, for the information of his Excellency the Commander-in-chief, that the Governor-general of India in Council deems it inexpedient for the present to publish or sanction the publication of any order disturbing the existing arrangement for the trial of Christian drummers attached to native corps.

Military Dep.

2. The case of these drummers will be brought to the notice of the Legislative Department, in which the draft of revised rules and articles for the native troops is now under consideration.

3. In the meantime it will be sufficient to provide against the award or infliction of corporal punishment in this presidency, an object which, in the opinion of his Lordship in Council, would be most conveniently effected by informing the commanding officers of divisions, and stations, and of native corps of the Bengal army only, through the medium of a circular from your department, that corporal

No. II.—Part 1.

Articles of War.

punishment by the lash is not among the punishments that may be awarded by a court martial to Christian drummers or musicians attached to any branch of the native army.

I am, &c.
(signed) *W. Casement*, M. G.
Secretary to the Government of India, Military Department.

Fort William, 25 Sept. 1837.

(True copy.)
(signed) *W. Casement*, M. G.
Secretary to the Government of India, Military Department.

(No. 357.)

Legis. Cons. 26 Feb. 1838. No. 15.

From *W. H. Macnaghten*, Esq. Secretary to the Government of India, to *J. P. Grant*, Esq. Officiating Secretary to the Indian Law Commissioners.

Sir,

Legislative.

In continuation of my letter, No. 343, to your address of the 25th ultimo, I am directed by the Right hon. the Governor-general of India in Council to forward to you, for the purpose of their being submitted to the law Commission, the accompanying original papers, as per margin, relative to the punishment of Christain drummers and musicians attached to native corps.

Extract, Military Department, 25 Sept. 1837, No. 358, with its Enclosure to the Adjutant-general.
Letter from Adjutant-general of the Army, 16 Aug. 1837, with one Enclosure.
Letter from Adjutant-general of the Army, 13 Apr. 1837.
Military Cons. 19 September 1836, No. 14 to 18.
Military Cons. 5 Dec. 1836, No. 22 to 25, and 28 to 31.
Military Cons. 9 Jan. 1837, No. 10 & 11, 63 to 65, 69 to 71.

2. You will be pleased to return the original papers with your reply.

I have, &c.
(signed) *W. H. Macnaghten*,
Council Chamber, 9 October 1837. Secy to the Govt of India.

(No. 91.)

Legis. Cons. 26 Feb. 1838. No. 16.

From *J. P. Grant*, Esq. Officiating Secretary Indian Law Commission, to *R. D. Mangles*, Esq. Officiating Secretary to the Government of India, Legislative Department.

Sir,

I am directed by the Law Commissioners to acknowledge the receipt of Mr. Secretary Macnaghten's letter of the 9th of October last, referring to them, as connected with the subject of the proposed articles of war, a variety of papers recorded in a discussion which has taken place respecting the punishment of Christian drummers and musicians attached to native regiments.

2. The remarks of the Commissioners on the proposed articles of war are submitted to government by a separate letter of this date to your address. On the subject of the papers above acknowleged, the Commissioners desire me to offer the following observations :—

3. Two principal questions appear to be raised in these papers, one is whether the government of India has the power to exempt Christian drummers and musicians, attached to native regiments, from the punishment of flogging; the other, whether that government, by the orders which it has issued, has certainly granted that exemption to such drummers and musicians. It is agreed on all hands, that the government both has the power to grant, and has actually granted, that exemption to the native Mussulmen and Hindoo soldiers of its armies.

4. The Law Commissioners can perceive no ground for the opinion that a man's religion determines the question whether the government has the power to exempt him from being flogged; that the government can grant the exemption if he is not a Christian, but cannot grant it if he is. Neither those Acts of the Imperial Legislature, from which the government of India derives its powers, nor the Military Act, nor the Act for the government of the Company's European troops, make any distinction between Christian and men of other religions. The distinction

distinction which is made by Parliament, is between the European troops and the native troops. And even this distinction has reference only to the authority of the legislative, not to that of the executive government of India. It amounts to this, that the government of India can make laws for the discipline of the native troops, but not for that of the European troops. There seems no reason to doubt, that whatever the government is competent to do in respect of the native troops without making a law, the government is also competent to do in respect of the European troops in the same manner. But the measure by which an exemption from the punishment of flogging was granted to the soldiers of the East India Company's native armies was an order of the executive government, not a law; and all doubt, if there ever was any, as to the intention of that order, has been removed by the declarations of the government itself. It is quite clear that it is the desire of the government that the order should be applied to the case of drummers and musicians attached to native regiments, though those persons should be Christians, and though they should not only be Christians, but European-born British subjects.

5. To say that an European-born British subject cannot be amenable to the laws and articles of war made in India for the government of the native troops is, the Law Commissioners observe, to advance a proposition which, whether it be correct or not, in nowise bears upon the present question. It cannot be doubted that when native soldiers were punished with flogging, the punishment was legal; but if flogging was then a legal punishment for native soldiers, it is so still. The law has undergone no alteration; it is only in the administration of the law that a change has taken place. While, therefore, soldiers of every religion, and of every country are by law equally liable to the punishment of flogging, the Law Commissioners cannot perceive a shadow of reason in favour of the opinion that the government is competent so to direct the administration of the law that no Mussulman soldier shall be flogged, but is not competent so to direct the administration of the law that no Christian soldier shall be flogged; or that the government is competent so to direct the administration of the law that no native drummer shall be flogged, but is not competent so to direct the administration of the law that no Christian drummer shall be flogged. To the Law Commissioners, it appears to be perfectly clear, that in all these cases the powers of the government are precisely the same.

6. The original papers which accompanied your letter are herewith returned.

I have, &c.

Indian Law Commission,
12 January 1838.

(signed) *J. P. Grant*,
Officiating Secretary.

FORT WILLIAM, Legislative Department, 26 February 1838.

Legis. Cons.
26 Feb. 1838.
No. 17.

(No. 9.)

READ an extract, Military Department, dated 25th September last, No. 358, relative to the punishment of Christian drummers and musicians attached to native corps.

Read also letter No. 91, from the Officiating Secretary to the Indian Law Commissioners, dated 12th January last, on the same subject.

Resolution.—The Honourable the President in Council remarks that the government has already determined that Christian drummers of the native army are entitled to the benefit of the general order abolishing flogging, and that they are not therefore liable to be flogged.

Ordered, that a copy of the foregoing Resolution be forwarded to the Military Department, in reply to the extract from that department above cited, and that the original papers which accompanied it be now returned.

No. II.—Part 1.
Articles of War.

(No. 166.)

Legis. Cons. 19 Nov. 1838, No. 5.

EXTRACT from the Proceedings of the Honourable the President in Council, in the Military Department, under date the 9th July 1838.

READ letters Nos. 175 and 177 from the Secretary to the Government of India, Military Department, with the Right honourable the Governor-general, dated the 31st May last, with enclosures to the latter.

Ordered, that copies of the despatches from Major-general Sir. W. Casement, K. C. B., abovementioned, together with the draft of rules and articles therein referred to, be transmitted to the Legislative Department, with reference to extract No. 10, from that Department, dated the 26th February last, and where in completing the revised code of the Articles of War for the better government of the native officers and soldiers in the service of the East India Company, the modifications proposed by the Right honourable the Governor-general which have received the concurrence of Government, will be attended to.

(True extract.)

(signed) *J. Stuart*, Lieut-Colonel,
Officiating Secretary to the Government of India,
Military Department.

(No. 175.—Military Department.)

From Major-general Sir *W. Casement*, K. C. B. Secretary to the Government of India, Military Department, with the Right honourable the Governor-general, to Lieutenant-colonel *J. Stuart*, Officiating Secretary to the Government of India, Military Department, Calcutta.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 422, of the 26th March last, with the papers therein referred to, relating to a revised code of articles of war, for the native armies of India, and to communicate the result of the Right honourable the Governor-general's consideration of the several points to which his attention has been directed.

Res. par. 2, Letter of Law Commrs. 12 Jan. 1838, pars. 4. 6.

2d. From the papers before him, the Governor-general does not understand that, as intimated in the 2d paragraph of your letter, the Legislative Department have recommended that the proposed rules and articles should "consist of a code of military regulations, and of articles of war framed with reference thereto," but only that they should be arranged and numbered in conformity to the articles for the East India Company's European troops, and not in conformity to the articles for the Queen's troops. The Governor-general observes, that, under the constitution of the government of India, no reason exists for making a distinction between military regulations and articles of war, corresponding to that between the provisions of a Mutiny Act, and articles of war founded thereon; and that an attempt to imitate such a model would lead to needless and inconvenient repetitions. If the intention be, that the proposed code should be divided into two parts, the 1st consisting of military regulations and the 2d of articles of war, though such an arrangement would not incur repetitions, yet there is no precedent for it in the articles for the Company's European troops, nor would it be attended with any advantage; but considering the objection of the Law Commission to have reference merely to the consecutive numeration of the articles from the first to the last, the Governor-general is of opinion that this plan, which was introduced into the articles for the Royal forces eight years ago, is recommended by its simplicity and facility of reference, and that as it may be expected to be adopted in the revised articles for the Company's European troops, the object of assimilation will be more surely attained by adopting the new arrangement than by adhering to the old.

Res. pars. 3, 25, Letter of Law Commrs. par. 7.

3. With respect to the introduction into the proposed articles of war of regulations respecting the jurisdiction of military courts of request and liability to trial by courts martial for non-military offences, where there are no British courts of civil

civil judicature, the Governor-general observes that the introduction of such provisions is sanctioned by the Mutiny Acts and articles for the Queen's army and for the Company's European troops, and that they could not be conveniently excluded.

4. The Governor-general concurs in opinion that in Article 3, the words "or from the Commander-in-chief" should be omitted, and also the words "non-commissioned officers and" and "non-commissioned officers or," but would retain the rest of the articles, inserting for the words "no commissioned" in the first line, "or non-commissioned." Res. par. 4, Letter of Law Commrs. par. 9, Art. 3.

5. The Governor-general concurs in the proposed alteration of Article 20. Res. par. 6, Art. 20.

6. The Governor-general observes that the powers of general and inferior courts martial are distinctly specified by Articles 76 and 92. Res. par. 7, Letter of Law Commrs. par. 13, Art. 30.

7. The Governor-general approves of Article 38, thinking that contempts will be more satisfactorily adjudicated by another court martial, and by the civil magistrate, when the offender is a non-military person. Res. par. 8, Letter of Law Commrs. pars. 14, 15, Art. 38.

8. In Article 47, omit the words, "shall prevaricate in giving evidence." It is implied, that refusal to be sworn is a contumacious refusal by a person not privileged to be examined on his solemn declaration, as some persons are under Articles 48, 67, 68. Therefore if the foregoing words be struck out of Article 47, there will be no occasion for the article proposed in the 9th paragraph of the resolution. Res. par. 9, Letter of Law Commrs. par. 16, Art. 47.

9. It appears expedient to omit Article 53. Res. par. 10, Letter of Law Commrs. par. 17, Art. 53.

10. In Article 54, instead of "shall not consist of less than seven," read "may consist of five, when a greater number cannot be conveniently assembled." Res. par. 11, Art. 54.

11. It appears to the Governor-general that Articles 55, 56, are sufficiently explicit; the majority is not to be calculated from the number of members originally assembled, but from the number to which they may be reduced, provided that number be not less than the minimum required by Articles 54, 74. Res. par. 12, Art. 55, 56.

12. The Governor-general is of opinion that the oaths contained in these articles could not be dispensed with, consistently with the express meaning and terms of the Article No. 21, of 1837, of which the second section provides that the dispensing power given by that law, "shall not extend to any oath now required by law to be taken in any stage of any judicial proceeding." It will also be in the recollection of the Honourable the President in Council, that in the preliminary resolution published with the first draft of the Act in question, the governments of the presidencies are specially enjoined (to guard against the possibility of the omission of an oath in proceedings of a judicial character, even when not judicial in term,) "to be particularly careful not to dispense with any oath which the law now requires in any stage of any proceeding which is in substance judicial." Upon these grounds, and having concurred in the principles on which the Act and resolutions in question were framed, his Lordship would adhere to the articles as they at present stand. Res. par. 13, Art. 62, 63.

13. In Article 65, for "evidence" read "witness." Res. par. 14, Art. 65.

14. The Governor-general approves of the article proposed to be substitutd for Article 66, with the exception of the last sentence, which is rendered unnecessary by Articles 47, 48. Res. par. 15, Art. 66.

15. In Article 73, add "or detachments numerically equal to four companies." Res. par. 16, Art. 73.

16. In Article 76, after "and," insert "loss of claim to additional pay for length of service, or solitary imprisonment; or" Res. par. 17, Art. 76.

17. The Governor-general approves of Article 77, considering the penalty to be incurred by negligence or misconduct. Res. par. 18, Art. 77.

18. In Article 78, instead of the words "or soldier," read "soldier or camp follower," and omit all the words after "flogged," and in Article 87, omit the four last lines. Res. par. 19, Art. 78-87.

19. In Article 79, after "days," add, "or confinement in the quarter-guard not exceeding three days." Res. par 20, Art. 79.

Res. par. 21, Art. 80.

20. In Article 80, omit the words after " court martial."

Res. par. 22, Letter of Law Commrs. par. 19, and Letter of 12 Feb. pars. 2, 3, Art. 84.

21. The Governor-general approves of Article 84, which is in conformity to the existing regulations for the Bengal army.

Res. par. 23, Letter, Law Commrs. par. 20, Art. 88.

22. In Article 88, insert " British" before " court," and " liable to be" before " tried."

Res. par. 24, Letter Law Commrs. par. 21, Art. 90.

23. In Article 90, after " seven officers," omit " at the least;" before " maliciously," insert, " who may be assisting in rebellion by," and after " other manner," omit " assisting in rebellion."

Res. par. 25, Letter, Law Commrs. par. 2, Art. 92.

24. In Article 92, insert " military" before " crimes," and after " punishable," insert, " or which may be so punishable under Article 88."

Res. par. 27.

25. As officers, civil and military, are subject to some deductions from their allowances if unavoidably absent from their duty on sick certificate, it appears expedient to leave the claims of returned prisoners to the whole of their arrears to the discretion of a court martial.

Res. par. 28, Letter, Law Commrs. par. 23, Art. 99.

26. The article proposed to be substituted for Article 99, leaves unaltered an effect of the existing law, which is not only anomalous, but highly unjust and indecorous. There are a few officers in the regular and local corps of the Bengal army (and probably there are some in the army of Madras and Bombay), who being the illegitimate sons of British subjects by native mothers, are not British subjects (in the sense in which that word is used in Acts of Parliament and charters relating to the administration of justice in India, as contradistinguished from natives of India) but natives of the East Indies, and by the 62d section of the 4 Geo. 4, c. 81, excepted from the provisions of that article; they are, therefore, amenable to native courts martial and courts of requests, and for non-military offences committed beyond the jurisdiction of the Supreme Court to the Company's courts, without the privilege of trial by jury. Until the condition of such persons shall be more adequately provided for, the Governor-general is of opinion that the following article, in conformity with the existing practice, founded on G. O. C. C. 6 July 1802, should be substituted for Article 99:—

" Persons subject to these rules and articles, of European descent, and professing the Christian religion, shall be amenable to courts martial and courts of requests, composed of European officers."

27. The original documents which accompanied your letter are herewith returned.

I am, &c.
(signed) *W. Casement*, M. G.
Secy to the Government of India, Military Department,
with the Right hon. the Governor-general.

Simla, 31 May 1838.

(No. 177.—Military Department.)

From Major-general Sir *W. Casement*, K. C. B. Secretary to the Government of India, Military Department, with the Right honourable the Governor-general, to Lieutenant-colonel *J. Stuart*, Officiating Secretary to the Government of India, Military Department, Calcutta.

Sir,

In continuation of my letter, No. 175, of this date, I am directed by the Right honourable the Governor-general to transmit to you herewith, for the information of the Honourable the President in Council, and for record in your office, the documents specified in the margin.

Original letter, No. 206, from the adjutant-general of the army, dated 18th ult. and its enclosure. Copy of letter, No. 176, to ditto, in reply, dated this day.

I am, &c.
(signed) *W. Casement*, M. G.
Secy to the Government of India, Military Department,
with the Right hon. the Governor-general.

Simla, 31 May 1838.

(No. 206.)

From the Adjutant-general of the Army to the Secretary to the Government of India, Military Department, with the Right honourable the Governor-general.

Sir,

I AM instructed by his Excellency the Commander-in-chief to request that you will be so good as to bring to the notice of the Right honourable the Governor-general the letter which was addressed to you from the Adjutant-general's office, by his Excellency's order, under date the 13th January 1837, No. 18.

Notwithstanding the opinion which his Excellency expressed in the last paragraph of that letter, 15 months have elapsed before the decision of the Government has been afforded to him. Transmitting letter dated January 1837.

That decision reached him yesterday, and he is informed that "the form into which the military regulations and articles of war have been cast by his Excellency's orders for the purpose of assimilating as nearly as possible to Her Majesty's articles of war, has been disproved of in the Legislative Department, as being at variance with that adopted by the Legislature and the King in the case of the Company's European troops."

His Excellency requests that the Right honourable the Governor-general will observe that in the 4th paragraph of the letter of January 1837, he stated that he had caused "the form of the manuscript to be altered, and the crimes and punishments to be classed," (as they are in the modern articles for the Royal army,) with the view of placing them "as nearly in accordance with the articles issued to Her Majesty's army as they appeared capable of being."

It appears that this endeavour has been disapproved by the Legislative Department, and the reason assigned is, because they "are at variance with that adopted by the Legislature and the King in the case of the Company's European troops."

His Excellency is not sure that he understands what this sentence is intended to convey; but he imagines that it means, because the revised articles are differently arranged from the mode adopted in the year 1823 (the date of the Act 4, Geo. 4).

If this is so, since he pointed out the variation in the letter before quoted of January 1837, a delay of 15 months in communicating the same to him would seem to have been very unnecessary.

Be this, however, as it may, the labours of his Excellency and of the Adjutant-general of the army, aided by the two officers of the Judge Advocate-general's department, having failed to be satisfactory to the government, his Excellency has only to lament the circumstance, and to report in the strongest form his opinion that the alterations which have taken place in the powers of courts martial by the abolition of corporal punishment in the native army, and by the numerous ameliorations which have been introduced by the Imperial Parliament into the Annual Mutiny Act and the articles of war for the Royal army, render a revision of the Act 4 Geo. 4, c. 81, and an alteration of the articles of war for the Honourable Company's army imperatively necessary; and that it is highly expedient that no time should be lost in preparing such as shall be applicable to the armies of the three presidencies in the East Indies. Major Young and Captain Birch.

He deems it his duty to call on the Supreme Government to place this business in hands which may complete it satisfactorily and speedily, and having done so, he takes leave of the subject.

I have, &c.

Head-quarters,
Simla, 18 April 1838.

(signed) *J. R. Lumley*, M. G.
Adjt Genl of the Army.

(No. 18.)

From Captain *P. Craigie*, Assistant Adjutant-general of the Army, to the Secretary to the Governor-general of India in Council, Military Department, dated 13 January 1837.

Sir,

I AM instructed by his Excellency the Commander-in-chief to forward, with a view to being laid before the Right hon. the Governor-general in Council, a revised draught of articles of war, prepared to meet the purposes of the whole of the army in India.

No. II.—Part 1.
Articles of War.

When his Excellency first assumed the command of the army, he found that some progress had been made in a revision of these articles, and that the opinions of the Madras and Bombay authorities had been sought for with reference to the fitness of what was proposed.

Committee:—Colonel Lumley, Adjutant-gen. of the army; Major Young, Judge Advocate-general; Captain Birch, Deputy Judge Advocate-general.

Replies were received from both presidencies, and the suggestions offered by them were ingrafted on the original draft, and arranged by a committee of officers in Calcutta.

His Excellency the Commander-in-chief having carefully considered the whole, and offered such remarks as appeared to him necessary, caused the form of the manuscript to be altered, and the various crimes and punishments to be classed, and placed as nearly in accordance with the articles issued to his Majesty's army as they appeared capable of being.

He now submits them to the Right hon. the Governor-general in Council, praying that they may be carefully revised by the proper legal authorities, and that they may be forthwith again submitted in their revised state to the Judge Advocate-general of the Madras and Bombay armies, should his Lordship in Council deem it necessary, so that as little delay as possible may occur before their promulgation.

Nos. 1, 2, 3.

Together with the revised articles he directs me to forward parcels, as per margin.

He further desires me to submit his opinion, that no time ought to be lost in revising the Act 4, Geo. 4, c. 81, as there are various points in that enactment which new circumstances have rendered inapplicable to the armies of India, and there are many others which have reference to the Honourable Company's European troops which appear to his Excellency to require to be placed in accordance with those which apply to his Majesty's troops as enacted in 4 Will. 4, c. 8.

(True copy.)
(signed) *J. R. Lumley*, M. G.
Adj^{t} Gen^{l} of the Army.

Head-quarters, Camp,
13 Jan. 1837.

(No. 176.)

To Major-general *J. R. Lumley*, Adjutant-general of the Army, Military Department.

Sir,

I HAVE the honour to acknowledge the receipt of your despatch, No. 206, of the 18th ultimo, and in reply am directed to acquaint you, for the information of his Excellency the Commander-in-chief, that the Right honourable the Governor-general having received a communication from Calcutta relating to the revised code of articles of war for the native armies of India, with suggestions from the Legislative Commission and the government at the presidency, his Lordship has signified his pleasure in regard to the modifications proposed and deemed advisable, and he hopes that no great delay will now take place in the final disposal of the subject.

2. His Honor in Council has been informed that the Governor-general is of opinion that the consecutive enumeration of the articles, from the first to the last, which was introduced into the articles for the royal forms eight years ago, is recommended by its simplicity and facility of reference, and that as it may be expected to be adopted in the revised articles for the Company's European troops, the object of assimilation will be more surely attained by adopting the new arrangement than by adhering to the old.

I have, &c.
(signed) *W. Casement*, M. G.
Sec^{y} to the Gov^{t} of India, Mil^{y} Dep^{t}, with the Rt. hon. the Gov^{r} Gen^{l}.

Head-quarters, Simla,
31 May 1838.

(True copy.)
(signed) *W. Casement*, M. G.
Sec^{y} to the Gov^{t} of India, Mil^{y} Dep^{t}, with the Rt. hon. the Gov^{r} Gen^{l}.

(True copies.)
(signed) *J. Stuart*, Lt. Col.
Offg Sec^{y} to the Gov^{t} of India, Mil^{y} Dep^{t}.

No. II.—Part 1.
Articles of War.

Legis. Cons.
19 Nov. 1838.
No. 6.

Section I.

Of Enlisting and Discharges.

Art. 1. Every recruit, prior to being enrolled in his regiment, shall have the articles of war relating to mutiny and desertion read and explained to him, after which the following declaration shall be made to him by the officer commanding, in front of the regiment, in presence of the native officers and soldiers.

Articles of war and declaration to be read, and oath to be administered to all recruits.

Declaration.

Declaration.

"In time of peace, after having served five years, on making application for your discharge through the commanding officer of your company, it will be granted you within three months from the date of your application, provided it will not cause the vacancies in your company to exceed 10, in which case you shall remain until that objection be removed; but in time of war you have no claim to a discharge, but shall remain and do your duty until the necessity of retaining you in the service shall cease."

The following oath shall then be required from him, according to the forms of his religion, in front of the colours.

Oath.

Oath.

"I, *A. B.*, inhabitant of village purgunnah subah son of do swear that I will never forsake or abandon my colours [the word guns to be substituted for colours in swearing in artillery recruits]; that I will march wherever I am directed, whether within or beyond the Company's territories; that I will implicitly obey all the orders of my superior officers, and in everything behave myself as becomes a good soldier, and faithful servant of the State."

Art. 2. And when any recruit is enlisted for a regiment raised for general service, the following words shall be added to the declaration made to him previously to enrolment:

Recruits for general service.

"And you engage to embark on board ship whenever the service shall require your proceeding by sea." [And the following words shall be added to the form of oath for all recruits for those regiments]: "And I do further swear that I will readily embark on board ship whenever the service shall require me to proceed by sea."

Art. 3. No commissioned officer shall be dismissed excepting by the sentence of a general court martial; no non-commissioned officer or soldier shall be discharged except by the sentence of a court martial. Every such dismissal or discharge shall include forfeiture of all claim to pension; provided that no sentence of discharge awarded by a court martial inferior to general shall be carried into effect without the concurrence of the general or other officer commanding the division, district, or field force, with which the prisoner may be serving; provided also, that the Governor-general in Council, in his executive capacity, and the Governor in Council of any presidency to which a commissioned or non-commissioned officer or soldier may belong, shall have power to order his dismissal or discharge.

Commissioned officers, non-commissioned officers, and soldiers, by what authority to be dismissed the service.

It is a matter of frequent occurrence that the Commander-in-chief is called upon to discharge soldiers on accounts which perhaps could not be taken cognizance of by a court martial.

To deprive the Commander-in-chief of this power will, in my opinion, be highly injurious to the discipline of the army.

Soldiers under three years' standing, who prove unlikely to be useful as such, are frequently discharged by the Commander-in-chief on statements of the fact by commanding officers of regiments, and it will be inconvenient and detrimental to the service to alter this.

(signed) *H. Fane.*

Art. 4. All non-commissioned officers and soldiers discharged the service, shall be furnished by the commanding officer of the regiment with a discharge certificate, made out in the vernacular language of the individual discharged, with an English translation, expressing the authority for, or cause of such discharge, and the period of their service in the regiment to which they may at the time belong.

Non-commissioned officers and soldiers to be furnished with a discharge certificate.

Art. 5. No non-commissioned officer or soldier shall enlist himself in any other regiment, without a regular discharge from his former corps, under the penalty of being reputed a deserter, and suffering accordingly.

Penalty of enlisting in other regiments, &c. without a discharge from former regiment.

Section II.

Crimes and Punishments:

Crimes punishable with Death, Transportation, or Imprisonment.

Penalty of mutiny.

Art 6. Any officer, non-commissioned officer, or soldier, who shall begin, excite, cause, or join in any mutiny or sedition in the regiment or corps to which he belongs, or in any other corps or regiment in the service, or serving as allies, on any pretence whatsoever, or who being present at any mutiny or sedition shall not use his utmost endeavours to suppress it, or who coming to the knowledge of any mutiny, intended mutiny, or concealed combination against the State, who shall not without delay give information thereof to his commanding officer; or,

Penalty of striking or drawing any weapon against a superior officer, &c.

Art. 7. Who shall strike his superior officer, or shall draw, or offer to draw, or lift up any weapon, or use or offer any violence against him on any pretence whatever, or shall disobey any lawful command of his superior officer; or,

Penalty of desertion.

Art. 8. Who shall be guilty of desertion; or,

Penalty if a sentry be found sleeping on his post, or of quitting it before he is relieved, in time of war or alarm.

Art. 9. Who, in time of war or alarm, shall be found sleeping upon his post, or shall leave it before regularly relieved; or,

Penalty of doing violence to any person who brings provisions to the camp or quarters, in time of war or alarm.

Art. 10. Who, in time of war or alarm, shall do violence to any person bringing provisions or other necessaries to the cantonment or camp of the troops employed, or shall force a safeguard; or,

Penalty of making known the watchword.

Art. 11. Who shall treacherously make known the watchword to any person not entitled to receive it according to the rules and discipline of war; or,

Penalty of making false alarms in camp or quarters.

Art. 12. Who, in time of war, shall by discharging of fire-arms, drawing of swords, beating drums, making signals, using words, or by any means whatsoever intentionally occasion false alarms in action, camp, garrison, or quarters; or,

Penalty of holding correspondence with, or giving intelligence to the enemy.

Art. 13. Who shall be convicted of holding correspondence with, or giving intelligence to the enemy, or any person in rebellion, either directly or indirectly, or coming to the knowledge of such correspondence, shall not discover it immediately to his commanding officer; or,

Penalty of relieving or harbouring an enemy.

Art. 14. Who shall directly or indirectly assist or relieve the enemy, or persons in rebellion, with money, victuals, or ammunition, or shall knowingly harbour or protect an enemy or rebel; or,

Penalty of going in search of plunder.

Art. 15. Who shall leave his commanding officer, or his post, or company, in time of action, or go in search of plunder; or,

Penalty of casting away arms or ammunition.

Art. 16. Who shall, in presence of an enemy, cast away his arms or ammunition; or,

Penalty of misbehaving before the enemy.

Art. 17. Who shall misbehave himself before the enemy, or use means to induce others so to misbehave; or,

Penalty of shamefully abandoning, &c. to the enemy any garrison, fortress, &c.

Art. 18. Who shall shamefully abandon, or deliver up to the enemy any garrison, fortress, post, or guard, committed to his charge, or which it was his duty to defend, or who shall use means to induce any other officer, non-commissioned officer, or soldier, so to abandon or deliver up any such garrison, fortress, post, or guard; or,

Penalty of treacherously suffering an enemy to escape.

Art. 19. Who shall treacherously release, wilfully aid, or connive at the escape of any enemy or rebel placed as a prisoner under his charge, shall suffer death or transportation for life, or any term of years, or imprisonment, with or without hard labour, for life, or for any term of years, as a general court martial shall award, together with solitary confinement for any portion or portions of the term of imprisonment, not exceeding one month at a time, or three months in the space of one year.

Crimes subject to Three Years' Imprisonment.

Penalty of selling stores, &c. the property of Government.

Art. 20. Any officer, non-commissioned officer, or soldier, who shall embezzle or fraudulently misapply any money entrusted to him on the public account, or for any military purpose, or any provisions, forage, arms, clothing, ammunition, or military

military stores, of whatever kind or description, the property of Government entrusted to his charge, or who shall be concerned in, or connive at any such embezzlement, or fraudulent misapplication, shall, on conviction thereof before a court martial, be dismissed the service and fined to the extent of the loss or damage, and be further liable to suffer imprisonment, with or without hard labour, for a term which may extend to three years, together with solitary confinement for any portion or portions of such term not exceeding one month at a time, or three months in the space of one year.

Crimes subject to Punishments vested in General Courts Martial by Articles, or in all Courts Martial by Articles.

I cannot see any advantage to be derived from this heading, and think that it will be best to omit it.
(signed) *H. Fane.*

Art. 21. Any officer, non-commissioned officer, or soldier, who shall be convicted of having advised or persuaded any other officer, non-commissioned officer, or soldier to desert, or having connived at such desertion; or,

Penalty of persuading any one to desert.

Art. 22. Who being on leave of absence shall have received information from the head-quarters of his regiment, or from other competent authority, that his regiment has been ordered on service, and shall not rejoin without delay; or,

Penalty of not joining from leave without delay, when corps is ordered on service.

Art. 23. Who, directly or indirectly, shall require or accept a bribe, present, or gratification, on the pretence of procuring leave of absence, promotion, or any other advantage or indulgence for any officer, non-commissioned officer, or soldier; or,

Penalty of taking a bribe for procuring leave, &c.

Art. 24. Who, in time of peace shall, by discharging fire-arms, drawing swords, beating drums, or by any other means whatever, occasion false alarms in camp, garrison, or quarters; or,

Penalty of occasioning false alarms in time of peace.

Art. 25. Who shall be found two miles from the camp without leave; or,

Penalty of being two miles from camp without leave.

Art. 26. Who shall be absent from his cantonment after tattoo, or from camp after retreat beating, without leave from his superior officer; or,

Penalty of remaining at night out of camp quarters.

Art. 27. Who shall fail to repair at the time fixed, to the parade or place appointed, if not prevented by sickness or some other sufficient cause; or,

Penalty of not repairing at the time fixed to the parade, &c.

Art. 28. Who shall, without urgent necessity, or without leave of his superior officer, quit his company or troop; or,

Penalty of quitting company or troop without leave.

Art. 29. Who shall quit his guard or post without being regularly dismissed or relieved; or,

Penalty of quitting guard or post without being relieved, &c.

Art. 30. Who being in command of a guard shall refuse to receive any prisoner duly committed to his charge, or shall without proper authority release any prisoner, or shall suffer, through carelessness or neglect, any prisoner to escape; or,

Penalty of releasing a prisoner without orders or suffering him to escape.

Art. 31. Who, being in command at any post, or on the march, on complaint made to him of any person under his command beating or otherwise ill-treating any person, or extorting from him more than he is obliged to furnish by authority, or disturbing fairs or markets, or committing any kind of riot, shall not see reparation done to the party or parties injured; or if that be impracticable, shall not report the same to his superior officer, shall be punished, if an officer, according to the sentence of a general court martial, with any such punishment or punishments a general court martial and all courts martial are enabled to inflict by articles; if a non-commissioned officer or soldier, according to the sentence of any court martial, with such punishment or punishments as all courts martial are enabled to inflict by articles.

Penalty of not seeing reparation done to persons ill-treated, &c.

I do not perceive any imprisonment which is made by the reconstruction of this article.
(signed) *H. Fane.*

Crimes punishable with Dismissal in an Officer, in a Non-commissioned Officer, or Soldier, as in Articles.

The headings as in the articles for Her Majesty's troops, as adopted in the original draft, appear to me more simple and preferable.
(signed) *H. Fane.*

Art. 32. Any officer, non-commissioned officer, or soldier, who shall knowingly enlist a deserter, or shall not after his being discovered, immediately cause him to be confined and give notice thereof to the nearest commissioned officer; or,

Penalty of entertaining and not confining deserters.

Penalty of drunkenness on duty.

Art. 33. Who shall be found drunk on duty; or,

Penalty of striking or doing violence to a sentry.

Art. 34. Who shall strike or do violence to a sentry; or,

Penalty of false returns or reports.

Art. 35. Who shall knowingly make a false return or report to any of his superior officers authorised to call for such return or report, of the state of the men under his command, or of arms, ammunition, clothing, or other stores thereunto belonging, or of which he may otherwise have charge; or,

Penalty of false certificates, &c. to obtain pension, &c.

Art. 36. Who shall be convicted of obtaining, or attempting to obtain, for himself, any officer, or soldier, or for any other person whatever, any pension or allowance, by any false statement, certificate, or document, or by the omission of the true statement; or,

Penalty of disgraceful conduct of commissioned officers.

Art. 37. Who being an officer, shall behave in a manner unbecoming the character of an officer, the fact or facts whereon the charge is grounded being clearly specified, shall, if an officer, on conviction thereof before a general court martial, be dismissed the service; and if a non-commissioned officer or soldier, shall, on conviction thereof, be punished according to the sentence of any court martial, with any such punishment or punishments as all courts martial are enabled to inflict by articles.

Crime punishable by Dismissal, or under Articles.

Penalty of breach of arrest.

Art. 38. Whatsoever officer under arrest shall leave his confinement before he is set at liberty by competent authority, shall, according to the sentence of a general court martial, be dismissed the service, or be punished with any punishment or punishments that may be applicable, which general courts martial *and all courts martial* are enabled to inflict by articles.

No court martial but a general court martial can try an officer; this alteration of the original is therefore erroneous.

(signed) *H. Fane.*

Crimes punishable with Restitution, and under Articles.

Penalty of stealing *from a comrade, &c.*

Art. 39. Whatsoever non-commissioned officer or soldier shall be convicted of stealing money or goods, the property of a comrade, or of a military officer, or of committing any petty offence of a fraudulent nature, to the injury of, or with intent to injure, any person, civil or military, shall be punishable according to the sentence of any court martial, with such punishment or punishments as all courts martial are enabled to inflict by articles, and the property so fraudulently obtained shall be restored to the owner.

Crimes punishable with Compensation, and under Articles.

Penalty of committing any waste or spoil in towns, villages, gardens, &c.

Art. 40. Any officer, non-commissioned officer, or soldier, who shall without orders commit waste or plunder, either in towns or villages, gardens or fields, or shall injure or destroy the property, or shall do violence on the person of any of the inhabitants; or,

Penalty of extorting money, &c. as fees, duties, on any pretence whatsoever.

Art. 41. Any commissioned officer commanding at any post, or on the march, who shall on any pretence whatever, illegally, and against the will of the parties, extort money or other property, or services; or,

Penalty of a non-commissioned officer or soldier extorting money, &c. as fees, on any pretence whatsoever.

Art. 42. Any non-commissioned officer or soldier, at any post, or on the march, who shall extort money or property of any description, as fees or duties, or on any pretence whatever, or shall without authority exact from villagers or others, carriage, porterage, or provisions; or,

Penalty of selling or wasting ammunition delivered out.

Art. 43. Who shall sell, lose, or designedly or through neglect waste the ammunition delivered out to him; or,

Penalty of spoiling, &c. horse, arms, &c.

Art. 44. Who shall sell, or designedly or through neglect lose or injure his horse, or spoil his arms, clothes, accoutrements, or regimental necessaries, shall make compensation for the injury, loss, or damage sustained; and such loss, injury, or damage shall

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in the case of any non-commissioned officer or soldier be made good by monthly stoppages, not exceeding half his pay and allowances.

And shall, if an officer, be punishable according to articles; if a non-commissioned officer or soldier, according to articles.

Crime Punishable with forfeiture of Pay, and under Articles.

Art. 45. Any officer, non-commissioned officer, or soldier, who shall absent himself without leave, or shall without sufficient cause, overstay the period for which leave may have been granted him, shall forfeit his pay and allowances for the time he may have been so irregularly absent, and be further liable to be punished by the sentence of any court martial, with any punishment or punishments, which all courts martial are enabled to inflict by articles.

Penalty of being absent without leave and of overstaying the period of leave.

Crime punishable with Dismissal, Forfeiture of Pension, and under Articles.

Art. 46. Whatsoever commissioned officer or soldier shall be convicted of feigning or producing disease or infirmity shall, if a commissioned officer, be dismissed the service; and if a non-commissioned officer or soldier, shall forfeit all claim to pension on discharge, in addition to such other punishment as may by any court martial be awarded under articles.

Penalty of malingering, &c.

Crimes incident to Court Martial.

Art. 47. Any person amenable to these articles of war who, when duly summoned before a court martial shall not attend, or shall refuse to be sworn, or to give evidence upon solemn affirmation or declaration, as hereinafter is mentioned, shall be subjected to a fine not exceeding a thousand rupees, and to such punishments as any court martial is enabled to inflict by articles.

Penalty of not attending when summoned as a witness before a court martial, or of refusing to be sworn.

Art. 48. Whatsoever officer shall be found guilty by a general court martial of perjury by wilfully and knowingly giving false evidence on oath, or solemn affirmation or declaration, on any trial before any other general or other court martial entitled to administer an oath, shall be dismissed the service, and be further subject by the sentence of a general court martial to fine to the amount of his arrears of pay and allowances, or imprisonment, which may extend to three years; and every non-commissioned officer or soldier so convicted shall be dismissed the service, and be liable to suffer such other punishment or punishments as any court martial may award under articles.

Penalty of perjury.

An omission here, which has reference to courts of request.

(signed) *H. Fane.*

Art. 49. Any person not amenable to these articles of war having been summoned upon any court martial as hereinafter mentioned, and refusing or neglecting to attend, or who attending shall give such testimony as, if given in a civil court, would render him guilty of perjury, shall be liable to trial in a civil court, and on conviction shall suffer such penalties as may be in force against a person offending in like manner in any civil court.

How punished for not attending, or for perjury.

Art. 50. Any person using menacing words, signs, or gestures, in the presence of a court martial then sitting, or causing any disorder or riot, so as to disturb their proceedings, shall be punished according to the nature and degree of his offence by the judgment of the same court martial, with imprisonment for any term not exceeding three months.

Penalty of using menacing words, gestures, &c. before court martial.

I disagree: a court of 13 officers, under irritation at an insult offered to them, are not, in my opinion, a proper tribunal to judge the offence.

The limitation of the amount of punishment I also disapprove; as cases have frequently occurred, and may again, in which that punishment would be exceedingly inadequate.

(signed) *H. Fane.*

Section III.

Administration of Justice.

General courts martial, by whom convened.

Art. 51. The Commander-in-chief, or commanding officer of the forces for the time being at the presidency to which the prisoner to be tried may belong, is empowered to convene general courts martial for the trial and punishment of all offences specified in these articles.

General courts martial, how constituted; not ordinarily to consist of less than 13 commissioned officers; when may consist of five.

Art. 52. A general court martial shall not consist of less than 13 commissioned officers, unless it be held out of the Honourable Company's territories, where a general court martial may consist of five commissioned officers, if a greater number cannot in the judgment of the convening officer be conveniently assembled.

No sentence to be put in execution until confirmed.

Art. 53. No sentence of a general court martial shall be put in execution until after a report shall have been made of the whole proceedings to the Commander-in-chief of the forces for the time being at the presidency to which the prisoner may belong, and until he shall have confirmed the same.

Courts martial, not being general, by whom appointed.

Art. 54. The commanding officer of every station, cantonment, garrison, detachment, or regiment, may assemble courts martial, not being general courts martial, according to the nature of his command, for the trial and punishment of all offences specified in these articles where general courts martial have not exclusive jurisdiction.

Sentence to be confirmed by the commanding officer previous to execution.

No sentence awarded by such courts martial shall be carried into effect until the commanding officer shall have confirmed it.

No officer commanding less than four companies to confirm the sentence of a court martial.

Art. 55. No officer on detached command of less than four companies of detachments numerically equal to four companies, shall carry into execution any punishment awarded by a court martial held by his order, until the sentence shall have been confirmed by the officer commanding the regiment to which the offender belongs, except when an immediate example is necessary.

Three, when sufficient.

Art. 56. Courts martial not being general shall consist of native officers. They shall not consist of less than five officers, excepting where that number cannot conveniently be assembled, when three shall be sufficient, of whom the senior officer shall be president.

A misunderstanding seems to exist, leading to this change, in the original draught. All courts martial, for the trial of native culprits, are composed of native officers.

(signed) *H. Fane.*

Senior officer to preside at general courts martial.

Art. 57. At all general courts martial, the senior officer shall sit as president, without being so appointed by warrant.

At all inferior courts martial an European officer to superintend.

Art. 58. At all courts martial inferior to general, an European officer of not less than five years' standing in the service, except in cases where no officer of that standing may be available, shall be appointed to conduct the proceedings.

Art. 59. An interpreter, if practicable, shall be appointed to all courts martial.

Hours of sitting.

Art. 60. Trials by courts martial may be carried on between the hours of six in the morning and four in the afternoon, and not otherwise, except in cases which may require an immediate example.

Art. 61. Forms of proceeding on the assembly of the court: the Judge-advocate or superintending European officer shall administer to the interpreter the following oath.

Oath.

Oath to be taken by the interpreter.

"I, *A. B.*, swear that I will faithfully interpret and translate the proceedings of the court, and that I will not divulge the sentence until it shall have been approved or published; and further, that I will not disclose or discover the vote or opinion of any particular member of the court, unless required to give evidence thereof by a court of justice or court martial in due course of law.

"So help me God."

Oath by members of the court.

In case of the unavoidable absence of an interpreter, the European superintending officer of a court martial inferior to general, shall take the oath prescribed for the interpreter.

interpreter. The Judge-advocate or superintending officer shall then cause the following declaration to be made by each member on oath, according to the forms of his religion :—

As a doubt on this subject is expressed in Mr. Amos's Minute, it may be useful to point out that Hindoos are sworn on the water of the Ganges, and Mahomedans on the Koran.

(signed) *H. F.*

"I, *A. B.*, do swear that I will duly administer justice according to the articles of war, without partiality, favour, or affection; and if any doubt shall arise, then, according to my conscience, the best of my understanding, and the custom of war in the like cases, and that I will not divulge the sentence of the court until it shall be approved of, or published; and further, that I will not disclose or discover the vote or opinion of any particular member of the court, unless required to give evidence thereof by a court of justice or a court martial in due course of law."

The following oath shall then be administered by the interpreter to the Judge-advocate or superintending officer :—

Oath to be taken by Judge-advocate and superintending officer.

"I, *A. B.*, do swear that I will not disclose or discover the vote or opinion of any particular member of the court martial, unless required to give evidence thereof by a court of justice or a court martial in due course of law.

"So help me God."

Provided that it shall not be necessary to re-administer these oaths on the commencement of fresh trials before the same court.

Summoning of witnesses; persons not amenable to military authority, how summoned.

Art. 62. In all cases where persons required as witnesses before a court martial may not be amenable to these articles, the Judge-advocate or commanding officer shall transmit to the magistrate within whose jurisdiction the witness may reside, his summons for the attendance of such person, and the magistrate shall cause the witness to be duly summoned.

Witnesses to be examined on oath or solemn declaration.

Art. 63. All persons who give evidence at a court martial are to be examined on oath, according to the forms of their respective religions, or if they shall object, on the ground of any religious scruple, to take an oath, they may, at the discretion of the court, be permitted to make their solemn affirmation or declaration in such manner as is hereinafter mentioned.

Hindoos exempted from taking an oath to subscribe a declaration.

Art. 64. In the case of a witness of the Hindoo persuasion being exempted from taking an oath, the following declaration shall be subscribed by him previously to his deposition :—

Declaration.

"I will faithfully answer, according to the truth, such questions as may be put to me by the court, in the cause now before the court; I will not declare anything not warranted by the truth; if I declare anything not warranted by the truth, I shall be deserving of punishment from Ishwar."

Mussulmans exempted from taking an oath to subscribe a declaration.

And in the case of a Mussulman witness so exempted, the following declaration shall be subscribed by him previously to his deposition :—

Declaration.

"I sincerely promise, and solemnly declare, in the presence of Almighty God, that I will faithfully and without partiality answer, according to the truth, any questions that may be put to me by the court respecting the cause now before the court."

After the witness, whether Hindoo or Mussulman, has given his deposition, he is to subscribe the following declaration :—

Declaration.

"I solemnly declare, in the presence of Almighty God, that I have faithfully and without partiality answered, according to the truth, the questions put to me by the court respecting the cause now before the court."

Manner of voting; members in voting to begin with the youngest, &c.

Art. 65. All the members of a court martial are to preserve order, and in giving their votes are to begin with the youngest; and in all cases where a sentence of death may not be awarded, the decision shall be by the majority of members present, provided the number of members present be not less than that required by the preceding articles; but in case of an equality of votes, the decision shall be in favour of the prisoner. The president at a general court martial shall vote with the other members, but shall have no casting vote. The European superintending officer at a court martial, inferior to general, shall not vote.

Equality of votes. Casting vote.

He never does so, and the negative is superfluous. (signed) *H. Fane.*

Concurrence of two-thirds of the members in a sentence of death.

Art. 66. No sentence of death shall be given against any offender by a court martial unless two-thirds of the members present concur therein.

Officers, non-commissioned officers, and soldiers, may be placed in arrest or confined preparatory to trial.

Art. 67. Whenever any officer, non-commissioned officer, or soldier, shall be charged with the commission of a crime deserving punishment, his commanding officer, if he is of opinion that there are reasonable grounds for inquiry, shall order him to be put under arrest; if an officer, or if a soldier, to be confined until he shall be either tried by a court martial, or shall be lawfully discharged by a proper authority; and a court martial for the trial shall be assembled within eight days, or if it cannot be conveniently assembled within that time, then as soon as it can be conveniently assembled.

Peculiar jurisdiction of general courts martial; commissioned officers amenable to general courts martial only.

Art. 68. All commissioned officers, all prisoners charged with offences which are punishable with death, or with transportation, or with imprisonment exceeding four months, shall be tried by general courts martial only.

Offences of which the punishment may be death or transportation, or imprisonment exceeding four months, or punishments in the next articles.

Powers of punishment vested in general courts martial.

Art. 69. A general court martial, when a commissioned officer shall be convicted before it, of any offence before specified, of which the punishment is not before defined, or is left discretionary, may adjuge such officer to be suspended from rank, and pay, and allowances, for a stated period, or to be placed lower on the list of his rank by an alteration of the date of his commission, thereby losing the corresponding benefit of length of service; and the court shall, in every such sentence, specify the extent or degree of suspension or reduction which they shall so adjudge.

The reference here to "the next article," appears an error, as in the next article the punishments of imprisonment, hard labour, and solitary confinement, are not mentioned. I do not think that the punishment of "hard labour" ought to stand as a punishment generally applicable to commissioned officers. It is our duty to uphold the respectability of native officers. (signed) *H. Fane.*

A general court-martial may, in such cases, adjudge a commissioned officer to be punished as in the next article, by imprisonment, hard labour, and solitary confinement.

Powers of punishment vested in all courts martial; non-commissioned officers punished with loss of rank, &c.

Art. 70. Any court martial, general or not general, when a non-commissioned officer or soldier shall be convicted before it of any offence before specified, of which the punishment is not before defined, or is left discretionary, may adjudge such non-commissioned officer to be reduced to serve as a private soldier, or may adjudge a havildar to be reduced to the rank of naick, or may adjudge a non-commissioned officer or soldier to be placed lower in the list of the rank which he holds, with proportionate loss in respect to length of service; such loss to be distinctly specified in the sentence, and to be restorable by the Commander-in-chief.

I should desire to correct this, though it was in the original draft. The dishonour of the reduction deprives the man punished of the respect which is necessary from the soldiers to enable him to conduct with any advantage the duties of inferior grade. (signed) *H. Fane.*

Imprisonment awardable.

Art. 71. Or may adjudge such non-commissioned officer or soldier to be imprisoned for any period not exceeding four months, or to be imprisoned with hard labour for any period not exceeding two months, and may direct the prisoners to be kept in solitary confinement for any portion or portions of his term of imprisonment not exceeding one month at a time; and in addition to any such punishments, may adjudge a forfeiture of all claim to pension on discharge, which might otherwise have accrued to such non-commissioned officer or soldier from the length or nature of his service. Provided that no soldier who has undergone the punishment of imprisonment with hard labour, under the sentence of any court martial, shall be capable of being re-admitted into the ranks, or receiving pension on discharge.

Corporal punishment not to be awarded.

Art. 72. It shall not be competent to any court martial to sentence any non-commissioned officer, soldier, or camp follower, to be flogged.

I am at a loss to know how camp followers, such as camel drivers, and various other descriptions of men attending camps, on service especially, are to be kept in order, or restrained from pillage or injury to the inhabitants, when corporal punishments are entirely abolished. The dismissal, for the sepoy, may prove sufficient by the loss it inflicts on him; but not so of any camp follower. (signed) *H. Fane.*

No person to be tried a second time for same offence.

Art. 73. No person being acquitted or convicted before a court martial of any offence, shall be liable to be tried a second time by the same or any other court martial for the same offence.

Art. 74. No

Art. 74. No person shall be liable to be tried or punished for any offence against these rules and articles, which shall appear to have been committed more than three years previous to the order directing the assembly of the court martial whereby he is to be tried, unless the person accused, by reason of his absenting himself or some other manifest impediment, shall not have been amenable to justice within the period, in which case such person shall be liable to be tried at any time not exceeding two years after the impediment shall have ceased.

Limitation of liability to trial.

Art. 75. No non-commissioned officer shall be reduced to the ranks but by the sentence of a court martial.

Non-commissioned officers, how to be reduced.

Punishments otherwise than by Courts Martial.

Art. 76. In cases of slight offences a commanding officer may, without the intervention of a court martial, award extra drill or extra duty, not exceeding 15 days, or confinement in the quarter-guard for not exceeding three days; and none of these descriptions of punishment shall be awarded by sentence of a court martial.

Jurisdiction of commanding officer: without a court martial, may award drill or extra duty, or confinement in the quarter-guard. Court martial precluded from awarding such sentences.

Of Complaints.

Art. 77. If any officer, non-commissioned officer, or soldier, shall think himself wronged by his superior or other officer, he is to complain thereof to the commanding officer of his troop or company, by whom, if the grievance be not redressed, such officer, non-commissioned officer, or soldier, may complain to the commanding officer of his regiment, who is hereby required to examine into such complaint, or remit it to superior authority, as the circumstances may require; but if the complaint should appear to be frivolous or groundless, the party preferring it shall be liable to be punished by the sentence of a court martial, according to the circumstances of the case, by being reduced in rank, or suspended from rank, or by being imprisoned or deprived of pay and allowances, according to the manner and to the extent as by these articles may be awarded by any court martial.

An officer, non-commissioned officer, or soldier, considering himself wronged by his superior, may complain to his commanding officer.

Allowances under Arrest.

Art. 78. Any commissioned officer, non-commissioned officer, or soldier, under arrest, or in confinement under a charge of any offence, shall not be entitled to receive his full pay and allowances from the day of his commitment till the day of his return to duty in his regiment, or to the party he shall be ordered to join, but shall be subsisted at a rate proportioned to his rank; and if he be acquitted he shall receive the balance of all arrears of pay and allowances accruing during the time of his confinement.

Commissioned, non-commissioned officer, or soldier, confined on a criminal charge, not entitled to full pay, &c. during his absence from his regiment, &c.

Execution of Sentences by Courts Martial.

Art. 79. Sentence of death shall be executed in like manner as such sentence is executed when awarded by courts martial for the trial of the East India Company's European troops. Whenever the sentence of a general court martial shall adjudge transportation, or sentence of death shall be commuted by competent authority to transportation, the Nizamut Adawlut shall give effect to such sentence or commuted sentence, on the sentence being certified to the court by the adjutant-general or his deputy, under the authority of the Commander-in-chief.

Sentence of death.

Nizamut Adawlut to give effect to sentences of transportation.

Art. 80. Persons sentenced to imprisonment by courts martial, shall be imprisoned in any public prison, or in any other fit place which the Commander-in-chief at the presidency to which the prisoner may belong shall appoint, provided such place be within such presidency.

Imprisonment.

Art. 81. Whenever any sentence of a court martial shall adjudge imprisonment, or imprisonment with labour or with solitary confinement, or both, it shall be the duty of any magistrate to give force to such sentences on the offender sentenced to imprisonment being delivered to his custody, and on being furnished with a copy of the sentence by the General or other officer commanding the division or district within which the trial is held.

Magistrates to give effect to sentences of imprisonment by military authority.

Art. 82. In every case wherein a fine or pecuniary compensation shall be adjudged by a court martial, any arrears of pay or public money due to the offender, or any property belonging to him in camp, garrison, or cantonment, shall be available under

When a fine is adjudged by a court martial, the pay or property, &c. of the offender within camp, &c. shall be available.

What is intended by the commanding officer's authority being sufficient in the first case, and the president of the court martial's necessary in the second?

(signed) *H. F.*

under an order from the officer commanding, for the payment of the amount so adjudged; and the goods and chattels of the offender may be distrained on, and the distress sold by warrant under the hand of the president of the court martial.

Section IV.

Effects of the Dead.

Effects of deceased commissioned officers, non-commissioned officers, soldiers, and public servants.

Art. 83. When any commissioned officer, non-commissioned officer, or soldier, or any person receiving public pay drawn by any officer in charge of a public department belonging to the army may die, or be killed in the service, the commanding officer of the regiment or party, or officer in charge of the department, shall secure his effects, and direct an inventory thereof to be taken, a duplicate of which is to be lodged in the office of the adjutant or officer in charge of the department.

Rules to be observed in the disposal of the effects of the deceased, if no executor be on the spot.

Art. 84. If there be no executor on the spot appointed by the deceased, the effects are to be publicly sold, the commanding officer of the regiment or party, or officer in charge of the detachment, after discharging the debts of the deceased, viz. the expense of funeral ceremonies, his debts in camp or quarters, and regimental debts of every description, shall account for the residue to the heir or heirs declared by will, whether written or verbal, or in failure of such, to the legal representative of the deceased, and in the event of no executor, heir, or other representative of the deceased attending and establishing his claim within 12 months from the date of the casualty, the amount in the hands of the officer having charge of the estate is to be remitted to the general treasury at the presidency.

Section V.

Articles relative to Service out of the British Territories, Martial Law, Rebels, Pay during Imprisonment by the Enemy, Effects of Deserters.

When troops are serving where there is no court of civil judicature, serious offences may be tried by general court martial.

Art. 85. Whenever any body of the troops shall be employed where there is no British court of civil judicature, any officer, soldier, or other person amenable to military law, accused of murder, robbery, or other serious offences against person or property, shall be liable to be tried by a general court martial, and punished with death or otherwise, according to law.

General court martial may be assembled for the trial of any person accused of any crime committed against the property, &c. of an inhabitant of any place out of the British territories where the troops shall be in military possession.

Art. 86. In any place out of the British territories, or in states in alliance with the British government where the troops shall be in military possession, the officer commanding any division, detachment, or distinct party, may assemble general court martial, which shall consist of not less than seven officers at the least, for the trial of any person under his command accused of any crime committed against the property or person of any inhabitant or resident at such place, or of having committed violence or any other offence; and every such court martial shall have power to adjudge any person so accused to suffer the punishment herein prescribed for the crime or offence charged, but no sentence passed by such court shall be executed until confirmed by the officer commanding the troops on service to which such division, detachment, or party, shall belong.

General court martial may be assembled for the trial of persons owing allegiance to the British government, who may be taken in arms against the said government, &c.

Art. 87. And in all places within the Company's territories, where martial law shall have been by due authority proclaimed, the officer commanding the division, detachment, or distinct party, may assemble general courts martial, which shall consist of not less than seven officers, for the trial of any person owing allegiance to the British government, who may be taken in arms against the said government, or who may be assisting in rebellion by maliciously attacking or injuring the persons or properties of any loyal subject, or in any other manner; and it shall be lawful for any such court martial to adjudge any person so found guilty to suffer death by being hanged by the neck until dead, or to be otherwise punished as to such court martial shall seem expedient, but no sentence shall be executed until confirmed by the said commanding officer.

And the commanding officer of every such division, detachment, or distinct party, is hereby authorised to arrest and detain in custody all persons engaged in such rebellion, or suspected thereof, and to cause all persons so arrested and detained to be brought to trial, and to execute the sentence of all such courts martial,

martial, whether of death or otherwise, and to do all other acts necessary for such several purposes.

Art. 88. Every court martial, as constituted in the preceding article, shall have power to try any person owing allegiance to the British government, who shall be taken in arms against the state, or otherwise aiding and abetting the enemy; and such person so found guilty shall be liable to the punishment of death, by being hanged by the neck until dead, or to transportation for life; but no sentence passed by such court shall be executed until confirmed by the officer commanding the troops on service to which such division, detachment, or party, shall belong.

Persons aiding, &c. the enemy, amenable to court martial, and liable to suffer death.

Sentence not to be executed until confirmed by the officer commanding.

Art. 89. Any officer, non-commissioned officer, or soldier, who shall be taken prisoner by the enemy, shall forfeit all claim to pay and allowances during the period of his remaining a prisoner, and until he shall again return to the service, when, if he can establish before a court martial that he was unavoidably taken prisoner in the course of service, and that he hath not served with or assisted the enemy, and that he hath returned as soon as possible to the service, he shall be entitled to receive either the whole, or such portion of his arrears of pay and allowances, as the court martial shall award.

Any officer, non-commissioned officer, or soldier, made prisoner, to forfeit all claim to pay and allowances, &c.

Art. 90. The effects of deserters are to be publicly sold, and the proceeds, after payment of regimental debts, remitted by the officer commanding the corps to which the deserter belongs to the general treasury at the presidency.

Effects of deserters.

Section VI.

Application of the Articles.

Art. 91. All officers, non-commissioned officers, soldiers, or any other persons whatsoever receiving pay, or being hired in the service of the artillery, whether drivers or others, all farriers, trumpeters, and drummers, all hospital attendants, sub-assistant surgeons and dressers, all artificers and labourers, followers, or others serving with the army, are to be governed by these articles, and subject to trial by courts martial.

I am not aware why the "artillery" is particularised. The article ought to be applicable to all followers. Perhaps the words "or others serving with the army," are intended to have that effect; but if so, why the first specification? signed) *H. F.*

Art. 92. All persons of the description mentioned in the last article, professing the Christian religion, are to be governed by these articles, save that in the trials of such persons by courts martial, the usage of the presidency to which they belong touching the constitution of the court martial shall continue to be followed.

Why this restriction?

See the letter from the secretary to government, Military Department, 31st of May 1838, paragraph 26. (signed) *H. F.*

Section VII.

Promulgation of the Articles.

Art. 93. These articles are to be translated into the several languages of the different presidencies; and the parts following, viz.
are to be read at every *general muster at the head of every regiment.

* Suggested by Colonel Morison.

Minute by the Honourable *A. Amos*, Esq.

Legis. Cons. 19th Nov. 1838. No. 7.

The articles of war which I have prepared have been framed upon a view of the draft submitted by the Commander-in-chief, the observations of the Law Commissioners, the Resolutions of Council, and the opinions of the Governor-general, together with some alterations which have occurred to myself.

I shall not in the ensuing pages notice those alterations in the original draft which I have made in conformity with the joint opinions of the Governor-general and the Council. I have adopted the form of the articles as presented in the original draft, and which the Governor-general approves of, though the Council and the Law Commissioners would have preferred a different form.

I have not included the provisions respecting courts of request. The Council and the Law Commissioners have expressed a decided opinion against their being included. I collect from the observations of the Governor-general, that articles of war are expected from England for the government of the Company's European

No. II.—Part 1.
Articles of War.

troops. It may be expected that they will follow the order of the English articles of war, and consequently will not contain any articles concerning courts of request. Thus, in addition to the reasons already assigned, uniformity will be observed by making courts of request the subject of a separate law. Another argument which may be entitled to consideration is, that courts of request affect civilians as plaintiffs, who are precluded from redress elsewhere. If, after further consideration, it be thought best to include courts of request, it is only adding a chapter; it will not disarrange the form of the articles as now drawn.

Section I.—*On Enlisting and Discharges.*

Art. 1. I presume it is not intended to enlist any soldier who will not take an oath.

The terms "regiment and corps" were used probably without any intentional difference.

Art. 3. In the original article a dismissal was not to include loss of pension, a discharge was to include it. I presume no pension is payable to the officer. The expression, "the government," was not sufficiently technical.

I do not know what power of discharge or dismissal is to be given to the local government in the Straits. I doubt whether the articles have been sufficiently examined with reference to their application to the Straits.

The distinction in the terms "dismissal" and "discharge," sounds invidious; but I presume that it is according to military usage.

Section II.—*Crimes and Punishment.*

Death and Transportation.

Art. 19. The particular provision as to solitary confinement is now introduced into all English statutes.

The power to "transport" was too vague in the original draft.

Imprisonment for Three Years.

Art. 20. I have altered this article in conformity with the views of the Commissioners, the Council, and the Governor-general, who have followed the proposed draft of the code. I cannot help thinking, however, that there may be a broad distinction between this species of military embezzlement and the kind of embezzlement provided against in the code. I must own that I think there is not sufficient reason for violating uniformity by a deviation from the 18th article of the Victoria Articles of War, which allows of transportation for life, or for years generally, or other punishments.

I presume the offence included in the corresponding English article, of "wilfully suffering to be spoiled," is intentionally omitted.

Crimes subject to punishments hereafter vested in courts martial.

Art. 21, &c. The offences which immediately follow seem to require a particular heading, the punishment being the same in all, and different from that in the preceding articles.

I do not discover any reason why, in offences which are the subject of the preceding articles, the general powers of punishment, as loss of rank, forfeiture of pension, &c. vested in courts martial, should not at discretion be applicable, where it is not thought proper to transport.

Art. 26. This article stood No. 39 in the original draft; I do not see any reason why it was postponed. The punishment accords with the punishments in this place, and the subject treated of in the adjacent sections is that of illegal absence.

Art. 31. I doubt whether the punishment, as it originally stood, was sufficiently defined by reference to subsequent articles; at all events, it is an improvement to point to the identical articles which contain the punishment.

I think it was left obscure whether, if a general court martial tried the offender, it could award imprisonment for four months under Art. 71.

Art. 32, &c. These offences require a distinct heading on account of the peculiarity of the punishment; viz. in an officer, dismissal simply, in a non-commissioned officer or soldier, punishment as by subsequent articles.

Art. 38. The punishment for this offence is different from any preceding punishment.

Art. 39, &c. The offences which immediately follow require a sentence different from any which has preceded.

Art. 40, &c. The crimes which immediately follow are attended with a sentence different from any in the preceding articles. The classing of them together enables us to avoid repetitions at the close of Articles 40 and 41 in the original draft.

Art. 45. The punishment is different from that in any preceding article, and therefore a new heading is inserted.

Art. 46. Ditto.

Art. 47, &c. The punishments in the next four articles are peculiar to the respective articles. They lay dispersed in the original draft; some of them, indeed, were introduced after the subject of punishments had been disposed of. They appear to have a connecting link of practical utility; viz. that of being "incident to courts martial."

Art. 47. The fine was before unlimited; it may be questioned whether four months' imprisonment, with hard labour and solitary confinement, as permitted by the articles referred to, be not too large a discretion.

Art. 48. I do not feel quite satisfied with the punishment in cases of perjury; viz. imprisonment of three years for an officer, and four months for a person of inferior station. It is to be observed, that the perjury may be upon a capital charge. I do not collect that perjury is punishable by military law under the English articles.

Art. 49. It is to be considered whether the expression "any person not military" as approved of, will answer our purpose; suppose the person refusing to attend be a European officer or soldier?

Art. 50. There is much difference of opinion upon this clause. I think there are strong grounds for maintaining the analogy of all other courts. It being considered incident to courts of justice to punish contempts to itself, and it being a common saying, that one court cannot judge of what is a contempt to another. There would be great practical difficulty, if any other court were to deal with such contempts. It will be prudent, however, to limit the extreme punishment.

Observations on the preceding Section (Section II.) *on Crimes and Punishments.*

Now that the offences have been arranged under specific heads, which have been determined, except in the last instance (offences incident to courts martial), by the nature of the punishment, perhaps it will appear (what was not so evident before) that, in several instances, the punishment is unnecessarily varied, the shades of variation being sometimes very slight, and, to first appearance, at least, capricious. Perhaps, on reconsideration, the Military Department may think it advisable to class all offences under three, or at most, four heads of punishment, each head admitting of adequate discretion and choice.

It appears to me that whilst the punishments of death, transportation, dismissal, imprisonment, fine, should be specifically appropriated, either separately or conjunctively, to specific offences, all other military punishments should be applicable at discretion to all offences. *Ex. gr.*, at present a person giving false alarms in time of war cannot be punished with loss of rank.

It may, perhaps, appear to be an inconvenient arrangement to conclude the section of crimes and punishments, whilst the statement of much the largest portions of the punishments is postponed by reference to subsequent articles. It may be thought advisable to conclude the section upon crimes and punishments with articles to this effect (having prepared the way for them by concluding such of the preceding articles as now refer to the court martial clauses accordingly): "Whereas reference is made in the preceding articles to certain discretionary punishments to be thereafter defined, such discretionary punishments are as follow." (Here insert the substance of the punishments which courts martial are now empowered to inflict under Section IV.)

The Judge-advocate will probably compare the list of crimes and punishments contained in these articles with that in the new articles of Queen Victoria, in case it be thought desirable that they should correspond more closely than they do at present.

I have kept, in Article 37, the terms of the original draft; for I presume that the offence of acting "in a manner unbecoming the character of an officer" conveys a distinct military meaning. I have omitted Article 51 of the original draft as too vague, but if pressed by the Judge-advocate, it will be proper to reconsider it.

No. II.—Part 1.
Articles of War.

The English articles contain similar terms, and, perhaps, they may be considered essential by the military authorities. I have omitted Article 59 for the same reasons as Article 51, if it be not also objectionable on the ground of repetition. I have omitted Article 46, as thinking it included in Article 20 of the present draft. If I am wrong, the punishment, at least, ought to be in keeping with that provided by Article 20. I have omitted Article 67, as thinking the process tedious and unnecessary.

I have omitted clause 58 for a reason which may make it expedient to consult the Advocate-general. I have consulted the Chief Justice, and think that we cannot give the prerogative power of mitigation to the Commander-in-chief. I observe, however, that the power is given by Article 8, Reg. V. of 1827, of the Madras code.

It may be important to consider whether the Governor-general should not reserve the power of confirming sentences of death, when passed under Article 85, *infra*. He has this power as regards European troops by 4 Geo. 4, c. 81, s. 4. It may be questioned also, whether we should not insert in the articles the effect of section 14 of 4 Geo. 4, clause 81, enabling the Governor-general in Council, and Governor in Council to suspend courts martial. Colonel Morison thinks this poweris even more necessary in the case of natives than that of Europeans.

Section IV.—*Courts Martial.*

Art. 51, &c. The articles respecting courts martial were very much confined in the original draft. I have endeavoured to keep distinct the several heads of, 1. The Constitution of Courts Martial; 2. Procedure; and, 3. Powers of Punishment of Natives. I presume that general courts martial may not be composed, but if they are, they do not require a superintending officer. The Bombay code expressly provides for general native courts martial. Perhaps this point has not been sufficiently adverted to.*

52. Unless the words "in the judgment of the convening officer" were introduced, the legality of the court might depend in the fact of conveniency, to be tried by a jury.

53. As to the power of mitigation, and confirmation by the Governor-general, *vide supra*.

Attention is requested to the point, whether the reference should be to the Commander-in-chief of the presidency, or to the Commander-in-chief of the forces, or both, in this and other articles.

61. It is presumed that the judges and interpreter will take an oath.

There is, perhaps, some obscurity as to who is to tender the oath. By the original draft, I should have supposed that, in a general court martial, the Judge-advocate, and not the President, is to tender the oaths. If this be not intended, a slight alteration in the present draft will be necessary.

62. I do not see any good reason for the tedious process of summoning through the intervention of a magistrate. The provision as to enforcing obedience was too vague; non-attendance is provided for in Act 49.

63. I have adopted the views of the Governor-general in requiring an oath or solemn affirmation. Were it necessary, much argument could be urged in favour of those views. But the Governor-general does not advert to the question which had been discussed in Council as to the point, what option should be given of taking a solemn affirmation. I have followed the rule in 9 Geo. 4, c. 74, s. 36, as the safest.

64. It would seem to follow that none but Hindoos and Mahomedans were allowed to make solemn affirmation. If this rule be not sufficiently large in practice, a power should be given to the court of administering a solemn affirmation in such terms as they may think fit, according to 9 Geo. 4, c. 74.

65. I have

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* Col. Morison observes, that "If there be no Judge-advocate to conduct the proceedings, there ought to be a superintending officer. Both cannot be required, and indeed the superintending officer, in cases of general courts martial, is usually appointed to act as 'Judge-advocate' for a trial, and gets a warrant as such from the Commander-in-chief.

"The Governor-general and Council do not interfere in sentences of death for crimes purely military. It is only for civil crimes permitted to be tried by courts martial under the Act of 1824, where confirmation of capital punishments or transportation for life is required.

"The Commander-in-chief may be a Company's officer. This, however, makes no difference; both officers having King's commissions.

"I should think this power even more necessary in the case of natives than Europeans."

65. I have adopted the suggestion of the Commissioners as to providing for a majority of members present, they being of the requisite number.

It is necessary to make provision as to a casting vote; I do not know if what I have added be conformable to military usage.

67. I think the commanding officer ought to have a discretion as to arresting.

I think that there was an ambiguity in the original articles as to the eight days.

68. The whole extent of the exclusive jurisdiction of general courts martial was not stated in the original draft. Perhaps this article is only a repetition of what is contained in preceding articles. The preceding articles might have been shortened by leaving out of them all statements as to whether the trial was to be by a general or by any court martial, but I did not like to make this alteration, as the repetition is of no great consequence, and may make the matter plainer.

69, 70, 71. These articles require very careful inspection, as they are referred to so frequently. Perhaps it was not clear before, that general courts had all the powers of punishment vested in inferior courts, besides those belonging exclusively to themselves. I presume, that sometimes a general court martial may be summoned for the trial of a person not an officer; and by reference to the section on crimes, that an officer ought to be liable to imprisonment in some cases not falling under the two first heads of punishment.

The latter part of clause 71 is borrowed from Art. 53 of the original draft.

76. Requires a distinct heading.

77. Ditto.

The punishment was left too indefinite.

78. Requires a new heading.

79. Ditto.

Perhaps something should be said as to execution of sentence by death.

The provisions in this and the following articles were dispersed.

80. The place of imprisonment was, perhaps, not properly provided for.

82. Perhaps the power of distress and sale may sometimes be useful.

Observations on Section III., *of Administration of Justice.*

I have omitted Art. 92, as containing repetitions and being unnecessary. Art. 53 has been omitted in conformity with the views of the Governor-general and Council. The latter part of that article has been incorporated. Art. 59 is omitted, because I think the substance is incorporated as far as relates to the place of imprisonment, and the forfeiture of pension on discharge. The rest of the article appears too vague; *vide supra*. Art. 67 is omitted, because thought unnecessary. Art. 77 is omitted, because included at the end of one of the articles in the section relating to punishments, viz. that relating to compensation.

SECTION V.—*Articles relating to Service out of the British Territories, &c.*

85. &c. The subjects of this section do not, perhaps, admit of any neat classification; but the present heading appears preferable to very vague heading in the original articles.

87. I have adopted the Governor-general's emendation.

88. The term of transportation required to be defined.

89. I have adhered to the original draft, and the views of the Governor-general.

SECTION VI.—*Application of the Articles.*

The heading of this section is taken from the new English articles of war. The subject of the section ought to be kept distinct, and placed either at the end or beginning of the articles. In the original draft there was no such distinct head, and moreover, the articles relating to the subject were so widely separated as to stand Nos. 87 and 99.

This section requires, perhaps, more consideration than any other contained in the articles. It will be convenient to consider, first, the points of law, and afterwards those of expediency. For, if particular views are taken of the legal points, the questions of expediency may not arise.

These articles are framed in pursuance of the 73d sect. of 3 & 4 Will. 4, c. 85, which empowers the Governor-general in Council to make articles of war "for the government of the native officers and soldiers in the military service of the

No. II.—Part 1.
Articles of War.

Company, and for the administration of justice by courts martial to be holden on such officers and soldiers." This clause is illustrated by the 96th sect. of 53 Geo. 3, c. 104, which states that doubts had arisen whether the local governments could make articles of war for such officers and soldiers.

One view of the subject which has been taken is, that articles of war and trials by courts martial proceed from prerogative powers, and that therefore we cannot legislate for such matters except under the express provision of the 73d sect. Another view is, that the doubts referred to in the 53 Geo. 3, most probably related to the point, whether the government of officers and soldiers was not matter of prerogative; but that if a person were not an officer or soldier, we might subject him to any court or species of law we pleased, which was not expressly forbid by the Charter Act.

According to the first of these views, it is obvious that the whole of Article 87 of the original draft is contrary to law, and it becomes immaterial to inquire into the questions of expediency connected with that article.

I think, however, we may adopt the latter view of the subject, particularly as it has been adopted in Reg. V. of 1827, Sect. 12, Art. 11, of the Madras code, framed with reference to the 53d of Geo. 3; and also in Bombay code, Reg. XXII. of 1827. Such also appears to have been the understanding in Bengal, though the articles at present in use in that presidency are of an ancient date.

Adopting this latter view, it is to be observed, that perhaps few of the articles apply to the delinquencies of camp followers in general. These delinquencies seem to be chiefly such as we adverted to in Reg. XX. of 1810, Sect. 2, Bengal code, c. 9, breach of local regulations in cantonments. I do not collect that it is intended to make delinquencies of this latter kind punishable by these articles.

But supposing that it is only intended to subject camp followers, &c. to the same articles as soldiers, a question of expediency arises, whether persons "gaining or seeking a livelihood in a military bazaar or cantonment" should be included as proposed in the original draft. Colonel Morison gives a strong opinion in the negative*.

The matter has undergone a great deal of discussion in the papers relative to military courts of request, and the opinion of the Advocate-general has been taken upon it with reference to the construction of the statute governing those courts.

As the matter has not been discussed with reference to these articles, I have adopted the description in Section 12, Article 11, of the Madras rules, which is in conformity with Colonel Morison's views, in order that the question may undergo consideration in the Military Department; the Bombay articles include such persons.

Another question of great importance arises upon Article 99 of the original draft, as to which the views of the framers of that draft of the Governor-general, and of the Council appear to differ.

Here, as in the former instance, I will first mention the legal points which occur.

I apprehend that we have no power to make articles of war for officers or soldiers who are not "natives." It is a more doubtful question whether (subject o the qu estion of our power to make articles for any persons besides officers and soldiers) the English articles for the Company's forces apply to drummers, camp followers, &c.; in short, to such as it is proposed to include in the present articles, but who are not strictly officers and soldiers. If those English articles do so apply, or rather if sect. 33 of 4 Geo. 4, c. 81, under the authority of which, I presume, the English articles are made, does so apply, we cannot make articles for drummers, camp followers, &c. unless they be "natives."

The Governor-general is desirous of having a trial by European officers of persons "of European birth or descent, and professing the Christian religion." I think we cannot legislate for officers or soldiers of European birth; whether every officer or soldier of European descent is "a native" in law, especially if his father be an Englishman, is a question, I think, of some difficulty. Whether we may

* Col. Morison observes, that the term "serving with the army," as used in the Mutiny Act, and as adopted in the 91st article of Mr. Amos's draft, means legally, "in the field," or on field service with the army; for it has been mentioned in the Supreme Court, that a cantonment is not with the army; which is then in a state of peace, and its laws applicable only to military crimes against military discipline. In deciding a case of false imprisonment of a sutler, at Secunderabad, it was ruled to be false imprisonment, which would not have been the case had it occurred in camp.

may legislate for camp followers, &c. not being strictly officers or soldiers, and not being "natives," is a question of considerable difficulty.

Such being the legal points, we will advert next to practice and expediency. Whether it be under regulation or by usage only, Colonel Morison says, "Natives,* who are Christians, are in Bengal tried by a European court martial; but not so at Madras or Bombay; and that to change the practice at Madras or Bombay would be a very dangerous innovation." I collect that the Governor-general would not make any distinction upon the ground of Christianity alone. On the whole, perhaps it is best, at the present juncture, to leave these matters as they stand at present.

(signed) *A. Amos.*

(No. 488.)

From *T. H. Maddock*, Esq. Officiating Secretary to the Government of India, to *W. H. Macnaghten*, Esq. Secretary to the Government of India, with the Governor-general.

Legis. Cons. 19th Nov. 1838. No. 8.

Sir,

I AM directed by the Hon. the President in Council to forward to you, to be laid before the Right hon. the Governor-general of India, for consideration and such orders as may be necessary, the enclosed drafts of articles of war for the discipline of the native army, with a minute of Mr. Amos on the subject, and the papers noted in the margin.†

Legislative Dep.

2. You will be pleased to return all the original papers sent herewith, with your reply.

I have, &c.

Fort William, 20 August 1838.

(signed) *T. H. Maddock*, Off^g Sec^y to the Gov^t of India.

From *W. H. Macnaghten*, Esq. Secretary to the Government of India, with the Governor-general, to *T. H. Maddock*, Esq. Officiating Secretary to the Government of India.

Legis. Cons. 19th Nov. 1838 No. 9.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 488, dated the 20th August last, submitting for the consideration of the Right hon. the Governor-general drafts of articles of war for the discipline of the native armies of the three presidencies, together with the papers connected with the subject.

Legislative.

2. In reply, I am desired to transmit to you copies of the papers noted on the margin, and to express the Governor-general's hope that, should the Hon. the President in Council concur with him in opinion, no time may now be lost in finally publishing the articles of war with reference to his Lordship's notes and to the letter from the Judge Advocate-general, which the President in Council will perceive correspond nearly in their tenor, and entirely in their substance; his Lordship having, subsequently to the preparation of the notes, deemed it desirable to obtain the sentiments of his Excellency the Commander-in-chief on so important a matter.

Notes by the Governor-general, dated 21st September 1838.
Letter, No. 201, to the Judge Advocate-general, dated 25th September.
Letter, No. 252, from the Judge Advocate-general, dated 8th October.

3. The original enclosures received with your letter, under acknowledgement, are returned herewith.

I have, &c.

Simla, 23 October 1838.

(signed) *W. H. Macnaghten*, Sec^y to the Gov^t of India, with the Governor-general.

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* By "natives," Col. Morison means people of colour, born in India, as well as those who are altogether of native descent.

† Extract Military Department, dated 18th September 1837, with one enclosure.
Minute by the Governor-general, dated 27th January 1837.
Minute by Col. Morison, dated 4th April 1837, with one enclosure.
Minute by Mr. Shakespear, dated 19th January 1837.
To Officiating Secretary to the Indian Law Commission, dated 25th September 1837.
From Officiating Secretary to the Indian Law Commission, dated 12th January 1837.
From Officiating Secretary to the Indian Law Commission, dated 12th February 1838.
Minute by Mr. Shakespear, dated 26th February 1838.
Resolution, dated 26th February 1838.
Extract, Military Department, dated 9th July 1838.
Articles of War.
Revised Articles of War.
Minute by the Hon. A. Amos, Esq. without date.

No. II.—Part 1.
Articles of War.

Legis. Cons. 19th Nov. 1838. No. 10. Enclosure.

NOTES by the Governor-general on the Alterations suggested by the Hon. Mr. *Amos* in the Articles of War for the Native Armies of the Three Presidencies, which accompanied the Office Memorandum from the Legislative Department, under date the 13th instant.

1. IN the draft of articles of war prepared by Mr. Amos, the article respecting courts of request has been omitted, because he thinks that the new articles for the Company's European troops will probably "follow the order of the English articles of war, and consequently will not contain any articles concerning courts of requests." The existing regulations for European military courts of request are not, I believe, contained in the articles of war for the Company's European troops, but in the Mutiny Act, and the effect of the 57th section of the 4 Geo. 4, c. 81, is the same as if it were repeated in the articles thereunto annexed, and in the articles for the Queen's troops. Thus the Queen's troops were subject to the 2d, 3d, and 4th sections of the 4 Geo. 4. c. 81, several years before the 102d article was introduced into the articles for the Queen's troops; and the same reason that led to the introduction of that article should have induced the insertion of one corresponding to the 57th section of the 4 Geo. 4, c. 81. Whether, therefore, the new articles for the Company's European troops shall or shall not contain an article concerning courts of request, provided the substance of section 57 be not rejected from the new Mutiny Act, which there is not the least reason to expect, the analogy will be equally strong in favour of the retention of Article 84 of the original draft.

2. I approve of the arrangement and headings proposed by Mr. Amos, and as it is very desirable to avoid repetitions, I approve also of the omission of Articles 46, 67, 77, and 92 (though there are articles corresponding to 92 in the Queen's and Company's codes) of the original draft, and of Article 62 of Mr. Amos's draft.

3. Under Article 48, a soldier may be tried for perjury by a general or regimental court martial. In the former case he may be punished as severely as an officer can be punished.

4. The offence described in Article 50 of Mr. Amos's draft is generally committed by prisoners under trial, and imprisonment not exceeding three months would be very inadequate to extreme cases of outrage and insult.

5. I disapprove of all the changes by which it is proposed to deprive the Commander-in-chief of the power of mitigating and remitting punishments, a power which he holds by warrant, and which has invariably been exercised by every officer authorised to confirm the sentence of a general or inferior court martial.

6. Article 51 of the original draft, corresponding to Article 2 of Section 21 of the Act for the Company's European troops, and to Article 70 of those for the Queen's troops, cannot, in my opinion, be dispensed with.

7. I see no necessity for the introduction of articles corresponding to sections 4 and 14 of the 4 Geo. 4, c. 81. Before the latter section was enacted, the government of Madras (Sir George Barlow's) protected Lieut.-colonel Munro from trial by a court martial; and government would exercise a similar power in the cases of native officers and soldiers if occasion should occur, which has never yet happened, to require such interposition.

8. Article 92 of Mr. Amos's draft, referring to persons "of the description mentioned in the last article," does not include officers and soldiers of cavalry and infantry; and does not remove fully, even from the Bengal army, and not at all from the armies of Madras and Bombay, the anomaly, injustice, and indecorum noticed in the 26th paragraph of the Military Secretary's letter of the 31st May 1838, No. 175, to the address of the Officiating Secretary to the Military Department of government. The amended rule proposed in that paragraph has no tendency to excite, or bring into collision the religious feelings or conscientious scruples of Christians, Mahomedans, and Hindoos, but rather to withdraw existing grounds for the excitement of such feelings.

9. To read portions of the articles of war "at every general muster," that is, monthly, would be inconveniently frequent.

10. From the foregoing observations, it will be seen, that with the exception of the alterations alluded to in the second paragraph, and mere verbal improvements, I adhere to the original draft, as corrected according to the directions contained in the letter of the 31st May 1838 above referred to.

Simla, 21 September 1838. (signed) *Auckland.*

(No. 201.—Military Department.)

From Major-general Sir *William Casement*, K.C.B. Secretary to the Government of India, Military Department, with the Right honourable the Governor-general, to Major *C. Young*, Judge Advocate-general, Head-quarters, Simla.

Sir,

I HAVE the honour, by direction of the Right honourable the Governor-general, to transmit to you the accompanying original papers from the Legislative Department, with a request that you will lay the same before the Commander-in-chief, for such observations as his Excellency may feel disposed to offer, on the alterations proposed by the Honourable Mr. Amos, to be introduced into the articles of war under preparation for the native armies of the three presidencies.

2. You will be pleased to return the original documents when no longer required.

I am, &c.

Simla,
25 September 1838.

(signed) *Wm. Casement*, M. G.
Secy to the Govt of India, Military Department,
with the Right hon. the Gov.-genl.

(No. 252.)

From the Judge Advocate-general to Major-general Sir *William Casement*, K.C.B. Secretary to the Government of India, Military Department, with the Right honourable the Governor-general.

Sir,

I AM directed by the Commander-in-chief to acknowledge the receipt of your letter, No. 201, of the 25th ultimo, transmitting original papers from the Legislative Department, and to submit the following observations by his Excellency on the alterations proposed by the Honourable Mr. Amos, to be introduced into the articles of war under preparation for the native armies of the three presidencies.

2. In the draft of articles of war prepared by Mr. Amos, the article respecting courts of request has been omitted, because he thinks that the new artices for the Company's European troops will probably "follow the order of the English articles of war, and consequently will not contain any articles concerning courts of request." His Excellency observes, that the existing regulations for European military courts of request are not contained in the articles of war for the Company's European troops, but in the Mutiny Act; and that the effect of the 57th section of the 4 Geo. 4, c. 81, is the same as if it were repeated in the articles thereunto annexed, and in the articles for the Queen's troops. Thus the Queen's troops were subject to the 2d, 3d, and 4th sections of that Act several years before the 102d article was introduced into the articles for the government of those troops, and the same reason that led to the introduction of that article, should have induced the insertion of one corresponding to the 57th sect. of the 4 Geo. 4, c. 81. Whether, therefore, the new articles for the Company's European troops shall, or shall not, contain an article concerning courts of request, provided the substance of sect. 57 be not rejected from the new Mutiny Act, which there is not the least reason to expect, the analogy will be equally strong in favour of the retention of Article 84 of the original draft. His Excellency does not, however, see any objection to the adoption of the alternative mentioned by Mr. Amos at the bottom of the first page of his Minute.

3. His Excellency does not admit the advantage of the references in Mr. Amos's headings to specific articles of war; but deems that leaving the reference general as in the original draft, and in the articles for Her Majesty's troops, is preferable; but as it is very desirable to avoid repetitions, he approves of the omission of articles 46, 67, 77, and 92 (though there are sections in the Queen's and Company's Mutiny Acts, viz. 4 and 35, corresponding to 92,) of the original draft, and of Article 62 of Mr. Amos's draft.

4. Under Article 48, a soldier may be tried for perjury by a general or regimental court martial. In the former case, the punishment may be as severe as can be awarded against an officer. The words "or any military court" should not be omitted, as including courts of request.

No. II.—Part 1.
Articles of War.

5. The offence described in Article 50 is generally committed by prisoners under trial, and imprisonment not exceeding three months would be very inadequate to extreme cases of outrage and insult.

6. His Excellency considers it his duty to express his entire dissent from all the changes by which it is proposed to deprive the Commander-in-chief of the power of mitigating and remitting punishments, a power which he holds by warrant, and which has invariably been exercised by every officer authorised to confirm the sentence of a general or inferior court martial. The power of commutation allowed by Article 58, (original draft) has also been exercised by his predecessors, and appears equally expedient.

7. Article 51 of the original draft, corresponding to Article 70 of the articles for the Queen's troops, and to Article 2 of Section 21 of those for the Company's European troops, cannot, in his Excellency's opinion, be dispensed with. In this and in other instances, the appearance of vagueness is sufficiently corrected by other articles, defining offences and specifying punishments, and by the custom of the service.

8. His Excellency sees no necessity for the introduction of articles corresponding to sections 4 and 14 of the 4 Geo. 4, c. 81. Before the latter section was enacted, the Governor in Council of Madras (Sir G. Barlow) protected Lieut.-colonel Munro from that by a court martial, and government would doubtless exercise similar power in the cases of native officers and soldiers if occasion should arise, which has never yet happened, to require such interposition.

9. Article 92 of Mr. Amos's draft, referring to persons "of the description mentioned in the last article," does not clearly include officers and soldiers of cavalry and infantry, and does not remove fully even from the Bengal army, and not at all from the armies of Madras and Bombay, the anomaly, injustice, and indecorum, noticed in the 26th paragraph of your letter, No. 175, of the 31st May last, to the address of the Officiating Secretary to the Military Department of government. The rule proposed in that paragraph has no tendency to excite, or bring into collision, the religious feelings, or conscientious scruples of Christians, Mahomedans, and Hindoos, but rather to withdraw existing grounds for the excitement of such feelings.

10. From the foregoing observations, and the notes appended to the margin of the fair copy of the articles as prepared by Mr. Amos, by his Excellency, it will be seen, that with the exception of the alterations referred to in the 3d paragraph, and verbal improvements and arrangements, his Excellency, with the exception of part of the Article 70 of Mr. Amos's draft, more approves of the original draft as corrected according to the directions contained in your letter, No. 175, of the 31st May 1838.

11. The original documents are herewith returned.

I have, &c.

Judge Advocate-general's Office,
Head-quarters, Simla,
8 October 1838.

(signed) *G. Young*,
Judge Advocate-general.

(True copies.)

(signed) *Wm. Casement*, M. G.
Secy to the Govt of India, Military Department,
with the Right hon. the Governor-general.

(True copies.)

(signed) *W. H. Macnaghten*,
Secy to the Govt of India, with the Gov.-genl.

MINUTE by the Honourable *A. Amos*, Esq. dated the 12th November 1838.

I PROPOSE to follow the suggestions of the Governor-general and Commander-in-chief, according to the order of the articles; the only preliminary matter which I think it necessary to notice relates to courts of request.

If, after what I am about to mention, the Governor-general and Commander-in-chief wish to have the 84th clause of the original draft included in the present articles, I, for my own part, should acquiesce; but it is to be observed, that there is a resolution of Government to codify the laws and rules touching courts of request for the three presidencies, as well for native as for European troops. It is only within the last week that we have received the voluminous papers sent by the Madras authorities upon this subject, and to make the requisite general code of law and procedure for courts military of request, will be a work of considerable labour and difficulty. The principal question is, whether the rules of the several presidencies as to courts of request should not remain until they can be carefully compared and examined; the effect of the 84th section of the original draft, is to make a general law for all the presidencies of a very superficial description, and before we have attended to all that has been written on the defects and advantages of the different rules existing at the different presidencies. There is another objection to the 84th section, to which it may be doubted if any conclusive answer has been given; that, according to precedent, rules for courts of request have always been provided for in some Act, and not in articles of war, for which there is a good reason, that they concern persons not military as well as military persons, and that they do not concern military persons in regard to acts done by them in a military capacity. Moreover, the Council, before I joined it, and the Law Commissioners were of opinion against including the 84th section of the original draft.

I now proceed to examine the suggestion respecting the articles in their order.

Art 3. In pursuance of the Commander-in-chief's suggestion, I have omitted the word "soldiers," thus not requiring a court martial for the discharge of private soldiers, and I have expressly authorised their discharge without a court martial.

Art. 31. In this and various other articles, the Commander-in-chief would leave the offender to be punished "according to the sentence of a general or other court martial," for which, indeed, there is a precedent in the English articles. I agree with the Law Commissioners that this is much too vague, and that in law as well as in reason. I have somewhat simplified the former terms which I used, and I think, that as I have provided in later clauses for specific punishments, which may be awarded by courts martial, where in the earlier clauses (as in this) the punishment is not defined, the present and like clauses are made, by references to and from the later clauses, sufficiently certain.

Art. 32. In this and subsequent articles I have made the headings to accord more with the views of the Commander-in-chief. This is mere matter of form. In altering the original draft I took pains to collect all offences together which were visited with the same punishment, and which were before much dispersed. I have now arranged all offences, except those incident to court martial, which are not capital, or punishable with transportation, under a general heading, which precedes Article 20. These offences have seven varieties *quoad* their punishment, and I had given a heading to each variety. I have not interfered with proposed punishments, or I should (perhaps in ignorance,) have been disposed to reduce them to two or three. The English articles have not so many varieties of punishment; but, though the English headings are not numerous, they are not a correct index to the cases contained under them. Those in the original draft would neither be correct or sufficiently descriptive. For instance, the heading which preceded Article 41 in the original draft, was quite as much applicable to Article 40 of the draft, coupled as that article must be in construction with Article 77 of that draft. I conceive that after this statement the Council will be willing to adopt such headings as the Commander-in-chief (if he thinks the matter of any importance,) may direct to be inserted in the draft, as rendering the matter plainer to military men.

Art. 38. The same observations occur as on Article 31. The Commander-in-chief, however, with deference, was in error, and not the draft; for the sentence on the officer was to be that of a general court martial, but the punishment might

No. II.—Part 1.
Articles of War.

be what all courts martial could inflict, c. 9, imprisonment not exceeding four months.

Art. 47. I have inserted an article as a new article for No. 47, agreeably to the opinion of the Governor-general and Commander-in-chief; but I have made the punishment more specific than it was in the original draft, in Article 51 of that draft.

Art. 48. The question of military courts is before noticed; I have, however, introduced them here, as the provision may be useful, and the omission of the 84th article of the original draft is not definitively determined on.

Art. 49. I have altered the limit of punishment, and should advise such limit as the Commander-in-chief may approve of. I should advise all conceding the point of the tribunal, if pressed; but it is quite a legal anomaly for one court to punish the contempts of another court. I am sure that it would be attended with many inconveniences in practice. It is often very necessary, in order to preserve order in courts of law in England, to imprison for the rest of the day, or for 24 hours, or for the rest of the assizes, say three or four days, whilst a regular indictment as for a misdemeanor in a different court would be highly inconvenient, and the punishment would greatly exceed the offence. If the offence amounted to a riot, or, I should conceive, if it were so aggravated as to deserve even an imprisonment of three months, it would almost always be of a nature to be punishable by any civil tribunal without reference to these articles, as an offence against the general law of the country.

This article, I conceive, would only be required where the offence, though an interruption of the proceedings, was not of a very grave character, or was too indefinite to be punished by the civil courts. The inconvenience of the attendance before another tribunal would often be a greater evil than the offence committed.

Art. 56. I have taken out the words "shall consist of native officers." The Commander-in-chief, however, is mistaken in supposing the original draft changed. The original draft provides that general courts martial shall consist of a certain number of officers. But Article 72 of that draft provides that inferior courts martial shall consist of native officers. Article 63 of the original draft also speaks of native courts martial.

Art. 61. My doubt was, whether there might not be some sects who would not swear at all, either by the Koran or the Ganges.

Art. 69. I have omitted the punishment by hard labour for officers, in pursuance of the suggestion of the Commander-in-chief. The Commander-in-chief notices what was a clerical error, arising from the next article having been by mistake numbered in the middle, as though it were two articles. By a few words at the end of the new 70th Article I have avoided all reference to any other article.

Art. 71. I have altered this agreeably to the Commander-in-chief's opinion.

Art. 72. I have struck out the words "camp followers," but whether I should go further, and expressly subject them to be flogged, as in the original draft, I must crave advice. I do not collect whether the Governor-general is disposed to concede this point to the Commander-in-chief. For all I know, it may be very necessary to flog camp followers; and I think the prevailing sentiments against the punishment of flogging may not be altogether reasonable; I think, however, that the camp follower would be punishable under these articles with imprisonment, though the circumstances of the camp might not admit of its being solitary.

Art. 82. I have left Article 82 as it stood, but shall be happy to alter it as may be suggested to be most convenient. The warrant of distress should be issued by the court which sentences the offender, just as the order to make compensation. But the offender's means of making compensation by his pay or property in the camp, by which the order of the court is to be complied with, is perhaps more within the cognizance, and should be subjected more to the control of the offender's commanding officer.

Art. 86. I think the term "place," would receive such a latitude of construction as to obviate the objection pointed out in the pencil note.

Art. 91. Considering that we were here upon a matter of doubtful jurisdiction, I was desirous of adhering as closely as possible to the precedent of the Madras Regulations. It appears to me, from the observations of the Governor-general and Commander-in-chief upon this and the next article, it has been read as if this article only extended to officers and soldiers of artillery, and not of infantry or cavalry;

cavalry; but that could not have been meant in the Madras Code, nor do I think it the right construction of the article. I have endeavoured to clear it of ambiguity, and to generalize it more, in compliance with the suggestion of the Commander-in-chief. The provision in the original draft respecting persons in cantonments, was objected to by Colonel Morison, and I do not collect that it is now pressed.

Art. 92. The Governor-general objected to the original draft, and proposed a clause as follows:—

"Persons subject to these rules and articles, of European descent, and professing the Christian religion, shall be amenable to courts martial and courts of request, composed of European officers."

The article as it now stands was framed to meet Colonel Morison's views, who observed that the Governor-general's article would alter the practice of the Madras and Bombay armies, with respect especially to the trial of Christian drummers of European descent, and that such a change at the present moment would be very impolitic. This point will require the particular attention of the Council. It is one upon which I am incompetent to form an opinion myself.

Art. 93. I have altered this article according to the suggestion of the Commander-in-chief.

It remains only to consider whether we should alter Articles 52 and 54, in order to give the Commander-in-chief and commanding officer at each presidency power to remit and mitigate sentences.

It is very desirable he should have that power, and I think that probably the warrant which the Commander-in-chief has, might enable him to exercise that power though we did not confer it.

It appeared to me, in conference with the Chief Justice, that we could not confer such a power on the Commander-in-chief, any more than on the Governor and Council of India, in his executive capacity.

Considering the strong opinions expressed by the Governor-general and Commander-in-chief upon this subject, I think it advisable to consult the Advocate-general.

(signed) *A. Amos.*

(No. 454.)

From *T. H. Maddock*, Esq. Officiating Secretary to the Government of India, to *J. Pearson*, Esq. Advocate-general.

Legis. Cons. 19th Nov. 1838. No. 12.

Sir,

Your opinion is requested by the President in Council upon the following points:— Legislative Dep.

The Governor in Council is now preparing articles of war for the native troops, under the provisions of 3 & 4 Will. 4, c. 85, s. 73.

He is desirous of being informed whether, in your opinion, in framing such articles, a power can be given to the Commander-in-chief to remit or mitigate the sentences of courts martial. It is his particular wish to do so, if it be practicable.

And whether such power can be given to the Commander-in-chief of each presidency.

The Commander-in-chief has a warrant from the Crown for the purpose of remitting and mitigating sentences, but the precise terms of such warrant are not known.

You are requested to consider whether the circumstance of this warrant will affect the preceding questions; and whether it would enable the Commander-in-chief to remit or mitigate sentences, although such power be not expressly conferred on him by the articles.

You are also requested to give your opinion, whether with reference to the terms of the 73d section, the Governor-general in Council has any power, by the articles of war, to subject camp followers, sutlers, and others attached to or serving with the army, not being officers or soldiers, to the jurisdiction of courts martial; also, whether such followers are, under the articles of war, to be viewed as liable to different rules when with the army in the field, and when attached to troops stationed in garrisons or cantonments.

No. II.—Part 1.
Articles of War.

On this subject I am directed to refer you to the 4 Geo. 4, c. 81, s. 8, containing articles of war for the Company's European troops, which is analagous to 9 Geo. 4, c. 74, s. 29.

As the Governor-general and the Commander-in-chief are particularly anxious that the articles of war should be published with the least possible delay, the President in Council will be obliged by your giving attention to the questions submitted, at your earliest convenience.

I have, &c.

Council Chamber,
12 Nov. 1838.

(signed) *T. H. Maddock*,
Officiating Secretary to the Government of India.

From *John Pearson*, Esq. Advocate-general, to *T. H. Maddock*, Esq. Officiating Secretary to the Government of India.

Legis. Cons.
19th Nov. 1838.
No. 13.

Sir,

I HAVE the honour to acknowledge the receipt of your letter relative to articles of war intended to be passed for the native troops by the Governor-general in Council.

2. I have never seen the warrant granted by the Crown, and am of course unable to say whether it is applicable to the points referred to me, or what powers of remitting or mitigating sentences it confers upon the Commander-in-chief.

And with respect to the questions themselves which have been put to me, I would beg to observe that I am not aware of any decision having taken place; and of course I can only give that opinion or interpretation of the Act of Parliament which seems to me the most probable.

3. In this light, then, I am certainly inclined to think that the Governor-general in Council has, under the 73d section of the Act you refer to, the power to subject "camp followers, sutlers, and others attached to or serving with the army to the jurisdiction of courts martial." By the Annual Mutiny Act a power is given "to make articles of war for the better government of Her Majesty's forces," an expression as general or indefinite as that of the 3 & 4 Will. 4, which makes it "lawful for the Governor-general in Council to make articles of war for the government of soldiers in the military service of the Company." Yet in the articles under the Annual Mutiny Act, have been, and still are, included suttlers (Art. 119) and followers of the army (Art. 101).

4. As to the power of pardoning or mitigating sentences, and whether the Governor-general in Council can invest the Commander-in-chief with it, no doubt a great difficulty arises. It may be urged that the power of pardon is a part of the prerogative of the Crown, and that with that prerogative the local legislature of India are forbidden to interfere. Yet it is difficult to think that this prohibition extends to the pardoning of natives, when the pardoning or mitigating of their sentences by courts in the Mofussil has so long been practised. Thus, by 21 Geo. 3, c. 70, s. 23, and by 37 Geo. 3, c. 142, s. 8, the powers of the government of India to frame Regulations are recognised as very extensive. The former stating that "if not disallowed by the King within two years, they shall be of force and authority to direct the provincial courts." The latter admitting the power of the government to pass Regulations "affecting the rights, persons, and property of the natives and other individuals amenable to the provincial courts of justice." In conformity with these, Regulations have been made by the Governor-general in Council. For example, the Regulation XIV. of 1810 vests in the Nizamut Adawlut the power of pardoning or mitigating sentences, with certain reservations to the government. As this was not disallowed within two years, I conceive that the government in passing it was not thought to have exceeded its legitimate powers. Now in this respect I do not see a difference between that case and the case which is submitted to me; for I cannot suppose the Parliament of England meant to restrain the Legislative Council more strictly in the passing of laws, than the Governor-general in Council in the making of Regulations. Of course if the Governor-general in Council can give the right to remit or mitigate punishments to the Commander-in-chief, I think they must have the same power in the instance of the Commander-in-chief in the other presidencies.

I have, &c.

Fort William, 17 Nov. 1838.

(signed) *John Pearson*,
Advocate-general.

FORT WILLIAM, Legislative Department, the 19th November 1838.

THE following draft of proposed articles of war for the government of the native officers and soldiers in the military service of the Honourable the East India Company, and for the administration of justice by courts martial, read in Council for the first time on the 19th November 1838, and ordered to be published for general information.

Legis. Cons. 19th Nov. 1838. No. 14.

SECTION I.

Of Enlisting and Discharges.

Art. 1. Every recruit, prior to being enrolled in his regiment, shall have the articles of war relating to mutiny and desertion read and explained to him, after which the following declaration shall be made to him by the officer commanding, in front of the regiment, in presence of the native officers and soldiers:

Articles of war and declaration to be read, and oath to be administered to all recruits.

Declaration.

"In time of peace, after having served five years, on making application for your discharge through the commanding officer of your company, it will be granted you within three months from the date of your application, provided it will not cause the vacancies in your company to exceed 10, in which case you shall remain until that objection be removed; but in time of war you have no claim to a discharge, but shall remain and do your duty until the necessity of retaining you in the service shall cease."

Declaration.

The following oath shall then be required from him, according to the formss of his religion, in front of the colours:

Oath.

"I, *A. B.*, inhabitant of village , pergunnah , subah , son of , do swear, that I will never forsake or abandon my colours [the word guns to be substituted for colours in swearing in artillery recruits]; that I will march wherever I am directed, whether within or beyond the Company's territories; that I will implicitly obey all the orders of my superior officers, and in every thing behave myself as becomes a good soldier and faithful servant of the state."

Oath.

Art. 2. And when any recruit is enlisted for a regiment raised for general service, the following words shall be added to the declaration made to him previously to enrolment:

Recruits for general service.

"And you engage to embark on board ship, whenever the service shall require your proceeding by sea." [And the following words shall be added to the form of oath for all recruits for those regiments]: "And I do further swear, that I will readily embark on board ship, whenever the service shall require me to proceed by sea."

Art. 3. No commissioned officer shall be dismissed excepting by the sentence of a general court martial. No non-commissioned officer shall be discharged except by the sentence of a court martial. Soldiers may be discharged the service by order of the officer commanding-in-chief at the presidency to which they may belong, or by a sentence of a court martial. Every such dismissal or discharge shall include forfeiture of all claim to pension; provided that no sentence of discharge awarded by a court martial inferior to general shall be carried into effect without the concurrence of the general, or other officer commanding the division, district, or field force with which the prisoner may be serving; provided also, that the Governor-general in Council in his executive capacity, and the Governor in Council of any presidency to which a commissioned or non-commissioned officer or soldier may belong, shall have power to order his dismissal or discharge.

Commissioned officers, non-commissioned officers, and soldiers, by what authority to be dismissed the service.

Art. 4. All non-commissioned officers and soldiers discharged the service, shall be furnished by the commanding officer of the regiment with a discharge certificate, made out in the vernacular language of the individual discharged, with an English translation, expressing the authority for, or cause of, such discharge, and the period of their service in the regiment to which they may at the time belong.

Non-commissioned officers and soldiers to be furnished with a discharge certificate.

Art. 5. No non-commissioned officer or soldier shall enlist himself in any other regiment without a regular discharge from his former corps, under the penalty of being reputed a deserter, and suffering accordingly.

Penalty of enlisting in other regiments, &c. without a discharge from former regiment.

Section II.

Crimes and Punishments:

Crimes punishable with Death, Transportation, or Imprisonment.

Penalty of mutiny.

Art. 6. Any officer, non-commissioned officer, or soldier, who shall begin, excite, cause or join in, any mutiny or sedition in the regiment or corps to which he belongs, or in any other corps or regiment in the service, or serving as allies, on any pretence whatsoever, or who being present at any mutiny or sedition shall not use his utmost endeavours to suppress it, or who coming to the knowledge of any mutiny, intended mutiny, or concealed combination against the state, who shall not without delay give information thereof to his commanding officer; or,

Penalty of striking or drawing any weapon against a superior officer, &c.

Art. 7. Who shall strike his superior officer, or shall draw, or offer to draw, or lift up any weapon, or use or offer any violence against him, on any pretence whatever, or shall disobey any lawful command of his superior officer; or,

Penalty of desertion.

Art. 8. Who shall be guilty of desertion; or,

Penalty if a sentry be found sleeping on his post, or of quitting it before he is relieved in time of war or alarm.

Art. 9. Who, in time of war or alarm, shall be found sleeping upon his post, or shall leave it before regularly relieved; or,

Penalty of doing violence to any person who brings provisions to the camp or quarters, in time of war or alarm.

Art. 10. Who, in time of war or alarm, shall do violence to any person bringing provisions or other necessaries to the cantonment or camp of the troops employed; or shall force a safeguard; or,

Penalty of making known the watchword.

Art. 11. Who shall treacherously make known the watchword to any person not entitled to receive it, according to the rules and discipline of war; or,

Penalty of making false alarms in camp or quarters.

Art. 12. Who, in time of war, shall by discharging of fire-arms, drawing of swords, beating drums, making signals, using words, or by any means whatsoever, intentionally occasion false alarms in action, camp, garrison, or quarters; or,

Penalty of holding correspondence with, or giving intelligence to, the enemy.

Art. 13. Who shall be convicted of holding correspondence with or giving intelligence to the enemy, or any person in rebellion, either directly or indirectly, or coming to the knowledge of such correspondence shall not discover it immediately to his commanding officer; or,

Penalty of relieving or harbouring an enemy.

Art. 14. Who shall directly or indirectly assist or relieve the enemy, or persons in rebellion, with money, victuals, or ammunition, or shall knowingly harbour or protect an enemy or rebel; or,

Penalty of going in search of plunder.

Art. 15. Who shall leave his commanding officer, or his post, or company in time of action, or go in search of plunder; or,

Penalty of casting away arms or ammunition.

Art. 16. Who shall, in presence of an enemy, cast away his arms or ammunition; or,

Penalty of misbehaving before the enemy.

Art. 17. Who shall misbehave himself before the enemy, or use means to induce others so to misbehave; or,

Penalty of shamefully abandoning, &c. to the enemy any garrison, fortress, &c.

Art. 18. Who shall, shamefully abandon, or deliver up to the enemy, any garrison, fortress, post, or guard, committed to his charge, or which it was his duty to defend, or who shall use means to induce any other officer, non-commissioned officer, or soldier so to abandon, or deliver up any such garrison, fortress, post, or guard; or,

Penalty of treacherously suffering an enemy to escape.

Art. 19. Who shall treacherously release, wilfully aid, or connive at the escape of any enemy or rebel placed as a prisoner under his charge, shall suffer death, or transportation for life or any term of years, or imprisonment with or without hard labour for life, or for any term of years, as a general court martial shall award, together with solitary confinement for any portion or portions of the term of imprisonment, not exceeding one month at a time, or three months in the space of one year.

Crimes not Punishable with Death or Transportation.

Penalty of selling stores, &c. the property of government.

Art. 20. Any officer, non-commissioned officer, or soldier, who shall embezzle or fraudulently misapply any money entrusted to him on the public account, or for any military purpose, or any provisions, forage, arms, clothing, ammunition,

or

or military stores, of whatever kind or description, the property of government, entrusted to his charge; or who shall be concerned in, or connive at, any such embezzlement or fraudulent misapplication, shall, on conviction thereof before a general court martial, be dismissed the service, and fined to the extent of the loss or damage, and be further liable to suffer imprisonment, with or without hard labour, for a term which may extend to three years, together with solitary confinement for any portion or portions of such term not exceeding one month at a time, or three months in the space of one year.

Penalty of persuading any one to desert.

Art. 21. Any officer, non-commissioned officer, or soldier, who shall be convicted of having advised or persuaded any other officer, non-commissioned officer, or soldier, to desert, or having connived at such desertion; or,

Penalty of not joining from leave without delay when corps is ordered on service.

Art. 22. Who, being on leave of absence, shall have received information from the head-quarters of his regiment, or from other competent authority, that his regiment has been ordered on service, and shall not rejoin without delay; or,

Penalty of taking a bribe for procuring leave, &c.

Art. 23. Who directly or indirectly shall require or accept a bribe, present, or gratification, on the pretence of procuring leave of absence, promotion, or any other advantage or indulgence for any officer, non-commissioned officer, or soldier; or,

Penalty of occasioning false alarms in time of peace.

Art. 24. Who, in time of peace, shall, by discharging fire-arms, drawing swords, beating drums, or by any other means whatever, occasion false alarms in camp, garrison, or quarters; or,

Penalty of being two miles from camp without leave.

Art. 25. Who shall be found two miles from the camp without leave; or,

Penalty of remaining at night out of camp or quarters.

Art. 26. Who shall be absent from his cantonment after tattoo, or from camp after retreat beating, without leave from his superior officer; or,

Penalty of not repairing at the time fixed to the parade, &c.

Art. 27. Who shall fail to repair at the time fixed to the parade or place appointed, if not prevented by sickness or some other sufficient cause; or,

Penalty of quitting company or troop without leave.

Art. 28. Who shall, without urgent necessity, or without leave of his superior officer, quit his company or troop; or,

Penalty of quitting guard or post without being relieved, &c.

Art. 29. Who shall quit his guard or post without being regularly dismissed or relieved; or,

Penalty of releasing a prisoner without orders, or suffering him to escape.

Art. 30. Who, being in command of a guard, shall refuse to receive any prisoner duly committed to his charge; or shall without proper authority release any prisoner; or shall suffer, through carelessness or neglect, any prisoner to escape; or,

Penalty of not seeing reparation done to persons ill-treated, &c.

Art. 31. Who, being in command at any post, or on the march, on complaint made to him of any person under his command beating or otherwise ill-treating any person, or extorting from him more than he is obliged to furnish by authority, or disturbing fairs or markets, or committing any kind of riot, shall not see reparation done to the party or parties injured, or if that be impracticable, shall not report the same to his superior officer, shall be punished by the sentence of a general or other court martial, in manner hereinafter mentioned.

Penalty for entertaining and not confining deserters.

Art. 32. Any officer, non-commissioned officer, or soldier, who shall knowingly enlist a deserter, or shall not after his being discovered immediately cause him to be confined, and give notice thereof to the nearest commissioned officer; or,

Penalty of drunkenness on duty.

Art. 33. Who shall be found drunk on duty; or,

Penalty of striking or doing violence to a sentry.

Art. 34. Who shall strike or do violence to a sentry; or,

Penalty of false returns or reports.

Art. 35. Who shall knowingly make a false return or report to any of his superior officers authorised to call for such return or report, of the state of the men under his command, or of arms, ammunition, clothing, or other stores thereunto belonging, or of which he may otherwise have charge; or,

Penalty of false certificates, &c. to obtain pension, &c.

Art. 36. Who shall be convicted of obtaining, or attempting to obtain, for himself, any officer, or soldier, or for any other person whatsoever, any pension or allowance, by any false statement, certificate, or document, or by the omission of the true statement; or,

Penalty of disgraceful conduct of commissioned officers.

Art. 37. Who, being an officer, shall behave in a manner unbecoming the character of an officer, the fact or facts whereon the charge is grounded being clearly

clearly specified, shall, if an officer, on conviction thereof before a general court martial, be dismissed the service; and if a non-commissioned officer or soldier, shall, on conviction thereof, be punished according to the sentence of a general or other court martial, in manner hereinafter mentioned.

Penalty of breach of arrest.

Art. 38. Whatsoever officer under arrest shall leave his confinement before he is set at liberty by competent authority, shall, according to the sentence of a general court martial, be dismissed the service, or be punished in manner hereinafter mentioned.

Penalty of stealing from a comrade, &c.

Art. 39. Whatsoever non-commissioned officer or soldier shall be convicted of stealing money or goods, the property of a comrade, or of a military officer, or of committing any petty offence of a fraudulent nature, to the injury of, or with intent to injure, any person, civil or military, shall be punishable according to the sentence of any court martial, in manner hereinafter mentioned, and the property so fraudulently obtained shall be restored to the owner.

Penalty of committing any waste or spoil in towns, villages, gardens, &c.

Art. 40. Any officer, non-commissioned officer, or soldier, who shall, without orders, commit waste or plunder, either in towns or villages, gardens or fields, or shall injure or destroy the property, or shall do violence on the person of any of the inhabitants; or,

Penalty of extorting money, &c. as fees, duties, or on any pretence whatsoever.

Art. 41. Any commissioned officer commanding at any post, or on the march, who shall, on any pretence whatever, illegally, and against the will of the parties, extort money or other property, or services; or,

Penalty of a non-commissioned officer or soldier extorting, money, &c. as fees, on any pretence whatsoever.

Art. 42. Any non-commissioned officer or soldier at any post, or on the march, who shall extort money or property of any description, as fees or duties, or on any pretence whatever, or shall, without authority, exact from villagers or others, carriage, porterage, or provisions; or,

Penalty of selling or wasting ammunition delivered out.

Art. 43. Who shall sell, lose, or designedly or through neglect, waste the ammunition delivered out to him; or,

Penalty of spoiling, &c. horse, arms, &c.

Art. 44. Who shall sell, or designedly or through neglect, lose or injure his horse, or spoil his arms, clothes, accoutrements, or regimental necessaries, shall make compensation for the injury, loss, or damage sustained; and such loss, injury, or damage, shall, in the case of any non-commissioned officer or soldier, be made good by monthly stoppages, not exceeding half his pay and allowances, and shall be punishable according to the sentence of a general or other court martial, in manner hereinafter mentioned.

Penalty of being absent without leave, and of overstaying the period of leave.

Art. 45. Any officer, non-commissioned officer, or soldier, who shall absent himself without leave, or shall, without sufficient cause, overstay the period for which leave may have been granted him, shall forfeit his pay and allowances for the time he may have been so irregularly absent, and be further liable to be punished by the sentence of a general or other court martial, in manner hereinafter mentioned.

Penalty of malingering, &c.

Art. 46. Whatsoever commissioned officer, non-commissioned officer, or soldier, shall be convicted of feigning or producing disease or infirmity shall, if a commissioned officer, be dismissed the service, and if a non-commissioned officer or soldier, shall forfeit all claim to pension on discharge, in addition to such other punishment as may by any court martial be awarded.

Art. 47. All crimes not capital, and all disorders or neglects which officers, non-commissioned officers, or soldiers, may be guilty of, to the prejudice of good order and military discipline, though not specified in these rules and articles, are to be taken cognizance of by courts martial, and to be punished with any such punishments as courts martial are by these articles enabled to inflict, according to the nature and degree of the offence.

Crimes incident to Courts Martial.

Penalty of not attending when summoned as a witness before a court martial, or of refusing to be sworn.

Art. 48. Any person amenable to these articles of war, who, when duly summoned before a court martial, shall not attend, or shall refuse to be sworn, or to give evidence upon solemn affirmation or declaration as hereinafter is mentioned, shall be subjected to a fine not exceeding 1,000 rupees, and such punishments as any court martial is enabled to inflict, as hereinafter mentioned.

Art. 49.

Art. 49. Whatsoever officer shall be found guilty, by a general court martial, of perjury, by wilfully and knowingly giving false evidence, on oath or solemn affirmation or declaration, on any trial before any other general or other court martial, or any military court, entitled to administer an oath, shall be dismissed the service, and be further subject by the sentence of a general court martial to fine to the amount of his arrears of pay and allowances, or imprisonment, which may extend to three years; and every non-commissioned officer or soldier so convicted shall be dismissed the service, and be liable to suffer such other punishment or punishments as any court martial may award under these articles. Penalty of perjury.

Art. 50. Any person not amenable to these articles of war, having been upon any court martial as hereinafter mentioned, and summoned, refusing or neglecting to attend, or who, attending, shall give such testimony as, if given in a civil court, would render him guilty of perjury, shall be liable to trial in a civil court, and on conviction, shall suffer such penalties as may be in force against a person offending in like manner in any civil court. How punished for not attending, or for perjury.

Art. 51. Any person using menacing words, signs, or gestures in the presence of a court martial then sitting, or causing any disorder or riot so as to disturb their proceedings, shall be punished, according to the nature and degree of his offence, by the judgment of the same court martial, with imprisonment for any term not exceeding six months. Penalty of using menacing words, gestures &c. before a court martial.

Section III.

Administration of Justice.

Art. 52. The Commander-in-chief or commanding officer of the forces for the time being at the presidency to which the prisoner to be tried may belong, is empowered to convene courts martial for the trial and punishment of all offences specified in these articles, and to confirm the sentence passed by such courts, and to mitigate or remit the punishments awarded according to his discretion. Courts martial, by whom convened; sentences confirmed or mitigated.

Art. 53. A general court martial shall not consist of less than 13 commissioned officers, unless it be held out of the Honourable Company's territories, where a general court martial may consist of five commissioned officers, if a greater number cannot, in the judgment of the convening officer, be conveniently assembled. General courts martial, how constituted; not ordinarily to consist of less than 13 commissioned officers. When may consist of five.

Art. 54. No sentence of a general court martial shall be put in execution until after a report shall have been made of the whole proceedings to the Commander-in-chief of the forces for the time being at the presidency to which the prisoner may belong, and until he shall have confirmed the same, and have signified his directions thereon. No sentence to be put in execution until confirmed.

Art. 55. The commanding officer of every station, cantonment, garrison, detachment, or regiment, may assemble courts martial, not being general courts martial, according to the nature of his command, for the trial and punishment of all offences specified in these articles, where general courts martial have not exclusive jurisdiction. No sentence awarded by such courts martial shall be carried into effect until the commanding officer shall have confirmed it. Courts martial not being general, by whom appointed.

Sentence to be confirmed by the commanding officer previous to execution.

Art. 56. No officer on detached command, of less than four companies, or detachments numerically equal to four companies, shall carry into execution any punishment awarded by a court martial held by his order, until the sentence shall have been confirmed by the officer commanding the regiment to which the offender belongs, except when an immediate example is necessary. *No officer commanding less than four companies to confirm the* sentence of a court martial.

Art. 57. Courts martial, not being general, shall not consist of less than five commissioned officers, excepting where that number cannot conveniently be assembled, when three shall be sufficient, of whom the senior officer shall be president. Courts martial not general, how constituted; not to consist of less than five officers ordinarily. Three, when sufficient.

Art. 58. At all general courts martial the senior officer shall sit as president without being so appointed by warrant. Senior officer to preside at general courts martial.

Art. 59. At all courts martial inferior to general, an European officer of not less than five years' standing in the service, except in cases where no officer of that standing may be available, shall be appointed to conduct the proceedings. At all inferior courts martial an European officer to superintend.

Art. 60. An interpreter, if practicable, shall be appointed to all courts martial. Interpreter to be appointed.

Hours of sitting.

Art. 61. Trials by courts martial may be carried on between the hours of six in the morning and four in the afternoon, and not otherwise, except in cases which may require an immediate example.

Forms of Proceeding.

Art. 62. On the assembly of the court the Judge-advocate or superintending European officer shall administer to the interpreter the following oath:—

Oath.

Oath to be taken by the interpreter.

"I, *A. B.*, swear that I will faithfully interpret and translate the proceedings of the court, and that I will not divulge the sentence until it shall have been approved or published; and further, that I will not disclose or discover the vote or opinion of any particular member of the court, unless required to give evidence thereof by a court of justice or court martial, in due course of law.

"So help me God."

In case of the unavoidable absence of an interpreter, the European superintending officer of a court martial inferior to general, shall take the oath prescribed for the interpreter. The Judge-advocate or superintending officer shall then cause the following declaration to be made by each member, on oath, according to the forms of his religion:—

Oath by members of the court.

"I, *A. B.*, do swear that I will duly administer justice according to the articles of war, without partiality, favour, or affection; and if any doubt shall arise, then according to my conscience, the best of my understanding, and the custom of war in the like cases; and that I will not divulge the sentence of the court until it shall be approved of or published; and further, that I will not disclose or discover the vote or opinion of any particular member of the court, unless required to give evidence thereof by a court of justice or a court martial, in due course of law."

The following oath shall then be administered by the interpreter to the Judge-advocate or superintending officer:—

Oath to be taken by Judge-advocate and superintending officer.

"I, *A. B.*, do swear that I will not disclose or discover the vote or opinion of any particular member of the court martial, unless required to give evidence thereof by a court of justice or a court martial, in due course of law.

"So help me God."

Provided that it shall not be necessary to re-administer these oaths on the commencement of fresh trials before the same court.

Summoning and Examination of Witnesses.

Persons not amenable to military authority, how summoned.

Art. 63. In all cases where persons required as witnesses before a court martial may not be amenable to these articles, the Judge-advocate or commanding officer shall transmit to the magistrate within whose jurisdiction the witness may reside his summons for the attendance of such person, and the magistrate shall cause the witness to be duly summoned.

Witnesses to be examined on oath or solemn declaration.

Art. 64. All persons who give evidence at a court martial are to be examined on oath, according to the forms of their respective religions, or if they shall object on the ground of any religious scruple to take an oath, they may, at the discretion of the court, be permitted to make their solemn affirmation or declaration, in such manner as is hereinafter mentioned.

Hindoos exempted from taking an oath to subscribe a declaration.

Art. 65. In the case of a witness of the Hindoo persuasion being exempted from taking an oath, the following declaration shall be subscribed by him previously to his deposition:—

Declaration.

"I will faithfully answer according to the truth such questions as may be put to me by the court in the cause now before the court; I will not declare anything not warranted by the truth. If I declare anything not warranted by the truth, I shall be deserving of punishment from Ishwar."

And

And in the case of a Mussulman witness so exempted, the following declaration shall be subscribed by him previously to his deposition:— Mussulmans exempted from taking an oath to subscribe a declaration.

"I sincerely promise and solemnly declare, in the presence of Almighty God, that I will faithfully, and without partiality, answer according to the truth any questions that may be put to me by the court respecting the cause now before the court." Declaration.

After the witness, whether Hindoo or Mussulman, has given his deposition, he is to subscribe the following declaration:—

"I solemnly declare, in the presence of Almighty God, that I have faithfully, and without partiality, answered according to the truth the questions put to me by the court respecting the cause now before the court." Declaration.

Manner of Voting.

Art. 66. All the members of a court martial are to preserve order, and in giving their votes are to begin with the youngest, and in all cases where a sentence of death may not be awarded, the decision shall be by the majority of members present, provided the number of members present be not less than that required by the preceding articles; but in case of an equality of votes, the decision shall be in favour of the prisoner. The president at a general court martial shall vote with the other members, but shall have no casting vote. The European superintending officer at a court martial inferior to general shall not vote. Members in voting to begin with the youngest, &c. Equality of votes. Casting vote.

Art. 67. No sentence of death shall be given against any offender by a court martial, unless two-thirds of the members present concur therein. Concurrence of two-thirds of the members in a sentence of death.

Art. 68. Whenever any officer, non-commissioned officer, or soldier, shall be charged with the commission of a crime deserving punishment, his commanding officer, if he is of opinion that there are reasonable grounds for inquiry, shall order him to be put under arrest, if an officer; or if a soldier, to be confined, until he shall be either tried by a court martial or shall be lawfully discharged by a proper authority; and a court martial for the trial shall be assembled within eight days, or if it cannot be conveniently assembled within that time, then as soon as it can be conveniently assembled. Officers, non-commissioned officers, and soldiers, may be placed in arrest or confined, preparatory to trial.

Peculiar Jurisdiction of General Courts Martial.

Art. 69. All commissioned officers, all prisoners charged with offences which are punishable with death, or with transportation, or with imprisonment exceeding four months, shall be tried by general courts martial only. Commissioned officers amenable to general courts martial only; offences of which the punishment may be death or imprisonment exceeding four months, or punishments in the next articles.

Art. 70. A general court martial, when a commissioned officer shall be convicted before it of any offence before specified, of which the punishment is not before defined, or is left discretionary, may adjudge such officer to be suspended from rank, and pay, and allowances, for a stated period; or to be placed lower on the list of his rank by an alteration of the date of his commission, thereby losing the corresponding benefit of length of service; and the court shall in every such sentence specify the extent or degree of suspension or reduction which they shall so adjudge. A general court martial may, in the cases before mentioned, adjudge a commissioned officer to be punished with imprisonment for any period not exceeding four months. Powers of punishment vested in general courts martial.

Art. 71. Any court martial, general or not general, when a non-commissioned officer or soldier shall be convicted before it of any offence before specified, of which the punishment is not before defined, or is left discretionary, may adjudge such non-commissioned officer to be reduced to serve as a private soldier, or may adjudge a non-commissioned officer or soldier to be placed lower in the list of the rank which he holds, with proportionate loss in respect to length of service, such loss to be distinctly specified in the sentence, and to be restorable by the Commander-in-chief, or may adjudge such non-commissioned officer or soldier to be imprisoned for any period not exceeding four months, or to be imprisoned with hard labour for any period not exceeding two months, and may direct the prisoner to be kept in solitary confinement for any portion or portions of his term of imprisonment not exceeding one month at a time; and in addition to any such punishments, may adjudge a forfeiture of all claim to pension on discharge which might otherwise have accrued to such non-commissioned officer or soldier from Powers of punishment vested in all courts martial; non-commissioned officers punished with loss of rank, &c.

the length or nature of his service. Provided, that no soldier who has undergone the punishment of imprisonment with hard labour under the sentence of any court martial shall be capable of being re-admitted into the ranks, or receiving pension on discharge.

Corporal punishment not to be awarded, except for offences by camp followers.

Art. 72. It shall not be competent to any court martial to sentence any non-commissioned officer or soldier to be flogged, but camp followers, not above the condition of menial servants or labourers, shall be liable to corporal punishment not exceeding 100 lashes, with or without nine tails.

No person to be tried a second time for same offence.

Art. 73. No person being acquitted or convicted before a court martial of any offence, shall be liable to be tried a second time by the same or any other court martial for the same offence.

Limitation of liability to trial.

Art. 74. No person shall be liable to be tried or punished for any offence against these rules and articles, which shall appear to have been committed more than three years previous to the order directing the assembly of the court martial whereby he is to be tried, unless the person accused, by reason of his absenting himself, or some other manifest impediment, shall not have been amenable to justice within that period, in which case such person shall be liable to be tried, at any time not exceeding two years after the impediment shall have ceased.

Non-commissioned officers, how to be reduced.

Art. 75. No non-commissioned officer shall be reduced to the ranks but by the sentence of a court martial.

Punishments otherwise than by Courts Martial.

Jurisdiction of commanding officer: without a court martial, may award drill or extra duty, or confinement in the quarter-guard. Court martial precluded from awarding such sentences.

Art. 76. In cases of light offences, a commanding officer may, without the intervention of a court martial, award extra drill or extra duty, not exceeding 15 days, or confinement in the quarter-guard for not exceeding three days; and none of these descriptions of punishment shall be awardable by sentence of a court martial.

Of Complaints.

An officer, non-commissioned officer, or soldier, considering himself wronged by his superior, may complain to his commanding officer.

Art. 77. If any officer, non-commissioned officer, or soldier, shall think himself wronged by his superior or other officer, he is to complain thereof to the commanding officer of his troop or company, by whom if the grievance be not redressed, such officer, non-commissioned officer, or soldier, may complain to the commanding officer of his regiment, who is hereby required to examine into such complaint, or remit it to his superior authority, as the circumstances may require; but if the complaint should appear to be frivolous or groundless, the party preferring it shall be liable to be punished by the sentence of a court martial, according to the circumstances of the case, by being reduced in rank, or suspended from rank, or by being imprisoned or deprived of pay and allowances, according to the manner and to the extent as by these articles may be awarded by any court martial.

Allowances under Arrest.

Commissioned officer, non-commissioned officer, or soldier, confined on a criminal charge, not entitled to full pay, &c. during his absence from his regiment, &c.

Art. 78. Any commissioned officer, non-commissioned officer, or soldier, under arrest, or in confinement under a charge of any offence, shall not be entitled to receive his full pay and allowances from the day of his commitment till the day of his return to duty in his regiment, or to the party he shall be ordered to join, but shall be subsisted at a rate proportioned to his rank; and if he be acquitted he shall receive the balance of all arrears of pay and allowances accruing during the time of his confinement.

Execution of Sentences by Courts Martial.

Sentence of death. Nizamut Adawlut to give effect to sentences of transportation.

Art. 79. Sentence of death shall be executed in like manner as such sentence is executed when awarded by courts martial for the trial of the East India Company's European troops. Whenever the sentence of a general court martial shall adjudge transportation, or sentence of death shall be commuted by competent authority to transportation, the Nizamut Adawlut shall give effect to such sentence or commuted sentence, on the sentence being certified to the court by the Adjutant-general, or his deputy, under the authority of the Commander-in-chief.

Imprisonment.

Art. 80. Persons sentenced to imprisonment by courts martial shall be imprisoned in any public prison, or in any other fit place which the Commander-in-chief at the presidency to which the prisoner may belong shall appoint, provided such place be within such presidency.

Art. 81. Whenever any sentence of a court martial shall adjudge imprisonment, or imprisonment with labour, or with solitary confinement, or both, it shall be the duty of any magistrate to give force to such sentences on the offender sentenced to imprisonment being delivered to his custody, and on being furnished with a copy of the sentence by the general or other officer commanding the division or district, within which the trial is held.

Magistrates to give effect to sentences of imprisonment by military authority.

Art. 82. In every case wherein a fine or pecuniary compensation shall be adjudged by a court-martial, any arrears of pay or public money due to the offender, or any property belonging to him in camp, garrison, or cantonment, shall be available, under an order from the officer commanding, for the payment of the amount so adjudged. And the goods and chattels of the offender may be distrained on, and the distress sold by warrant under the hand of the president of the court martial.

When a fine is adjudged by a court martial, the pay or property, &c. of the offender within camp, &c. shall be available.

Section IV.

Effects of the Dead.

Art. 83. When any commissioned officer, non-commissioned officer, or soldier, or any person receiving public pay drawn by any officer in charge of a public department belonging to the army, may die or be killed in the service, the commanding officer of the regiment or party, or officer in charge of the department, shall secure his effects, and direct an inventory thereof to be taken, a duplicate of which is to be lodged in the office of the adjutant, or officer in charge of the department.

Effects of deceased commissioned officers, non-commissioned officers, soldiers, and public servants.

Art. 84. If there be no executor on the spot appointed by the deceased, the effects are to be publicly sold, the commanding officer of the regiment or party, or officer in charge of the department, after discharging the debts of the deceased, viz. the expense of funeral ceremonies, his debts in camp or quarters, and regimental debts of every description, shall account for the residue to the heir or heirs declared by will, whether written or verbal, or in failure of such to the legal representative of the deceased, and in the event of no executor, heir, or other representative of the deceased attending and establishing his claim within 12 months from the date of the casualty, the amount in the hands of the officer having charge of the estate, is to be remitted to the general treasury at the presidency.

Rules to be observed in the disposal of the effects of the deceased, if no executor be on the spot.

Section V.

Articles relating to Service out of the British Territories, Martial Law, Rebels, Pay during Imprisonment by the Enemy, Effects of Deserters.

Art. 85. Whenever any body of the troops shall be employed where there is no British court of civil judicature, any officer, soldier, or other person amenable to military law, accused of murder, robbery, or other serious offences against person or property, shall be liable to be tried by a general court martial, and punished with death, or otherwise, according to law.

When troops are serving where there is no court of civil judicature, serious offences may be tried by general court martial.

Art. 86. In any place out of the British territories or in states in alliance with the British Government, where the troops shall be in military possession, the officer commanding any division, detachment, or distinct party, may assemble general courts martial, which shall consist of not less than seven officers at the least, for the trial of any person under his command, accused of any crime committed against the property or person of any inhabitant or resident at such place, or of having committed violence or any other offence, and every such court martial shall have power to adjudge any person so accused to suffer the punishment herein prescribed for the crime or offence charged; but no sentence passed by such court shall be executed until confirmed by the officer commanding the troops on service to which such division, detachment, or party, shall belong.

General courts martial may be assembled for the trial of any person accused of any crime committed against the property, &c. of an inhabitant of any place out of the British territories where the troops shall be in military possession, &c.

Art. 87. And in all places within the Company's territories where martial law shall have been by due authority proclaimed, the officer commanding the division, detachment, or distinct party, may assemble general courts martial, which shall consist of not less than seven officers, for the trial of any person owing allegiance to the British Government who may be taken in arms against the said Government, or who may be assisting in rebellion by maliciously attacking or injuring the persons or properties of any loyal subjects, or in any other manner; and it shall be lawful for any such court martial to adjudge any person so found guilty to suffer death,

General courts martial may be assembled for the trial of persons owing allegiance to the British government who may be taken in arms against the said government, &c.

No. II.—Part 1.
Articles of War.

death, by being hanged by the neck until dead, or to be otherwise punished as to such court martial shall seem expedient; but no sentence shall be executed until confirmed by the said commanding officer.

And the commanding officer of every such division, detachment, or distinct party, is hereby authorised to arrest and detain in custody all persons engaged in such rebellion, or suspected thereof, and to cause all persons so arrested and detained to be brought to trial, and to execute the sentence of all such courts martial, whether of death, or otherwise, and to do all other acts necessary for such several purposes.

Persons aiding, &c. the enemy, amenable to court martial, and liable to suffer death.

Art. 88. Every court martial, as constituted in the preceding article, shall have power to try any person owing allegiance to the British Government, who shall be taken in arms against the state, or otherwise aiding and abetting the enemy; and such person so found guilty shall be liable to the punishment of death, by being hanged by the neck until dead, or to transportation for life; but no sentence passed by such court shall be executed until confirmed by the officer commanding the troops on service to which such division, detachment, or party, shall belong.

Sentence not to be executed until confirmed by the officer commanding.

Any officer, non-commissioned officer, or soldier, made prisoner, to forfeit all claim to pay and allowances, &c.

Art. 89. Any officer, non-commissioned officer, or soldier, who shall be taken prisoner by the enemy shall forfeit all claim to pay and allowances during the period of his remaining a prisoner and until he shall again return to the service; when, if he can establish before a court martial, that he was unavoidably taken prisoner in the course of service, and that he hath not served with or assisted the enemy, and that he hath returned as soon as possible to the service, he shall be entitled to receive either the whole, or such portion of his arrears of pay and allowances as the court martial shall award.

Effects of Deserters.

Art. 90. The effects of deserters are to be publicly sold, and the proceeds, after payment of regimental debts, remitted by the officer commanding the corps to which the deserter belongs, to the general treasury at the presidency.

Section VI.

Application of the Articles.

Art. 91. All officers, non-commissioned officers, soldiers; all drivers or farriers, trumpeters and drummers; all hospital attendants, sub-assistant surgeons and dressers; all artificers and labourers, sutlers, camp followers, or others attached to or serving with any part of the army, are to be governed by these articles, and subject to trials by courts martial.

Section VII.

Promulgation of the Articles.

Art. 92. These articles are to be translated into the several languages of the different presidencies, and the parts following, viz. are to be read once every six months at the head of every troop or company mustered in the service.

Ordered, That this draft be reconsidered at the first meeting of the Legislative Council after the 19th day of December next.

(signed) *T. H. Maddock*,
Offg Secy to the Govt of India.

(No. 843.)

Legis. Cons. 19th Nov. 1838. No. 15.

From *T. H. Maddock*, Esq. Officiating Secretary to the Government of India, to *W. H. Macnaghten*, Esq. Secretary to the Government of India, with the Governor-general.

Legislative Dep.

Sir,

On the occasion of transmitting to you, to be laid before the Right hon. the Governor-general, the enclosed printed copy of the proposed articles of war for the government of the native officers and soldiers in the military service of the Hon. East India Company, and for the administration of justice by courts martial, I am directed to state, that the article relative to the trial of Christians, the descendants

descendants of Europeans, has been omitted in consequence of the President in Council deeming it expedient to make a reference on the subject of that article to the governments of Madras and Bombay, as to the effects which its adoption would be likely to produce in the armies of those presidencies.

I have, &c.

Fort William,
19 November 1838.

(signed) *T. H. Maddock*,
Offg Secy to the Govt of India.

From *T. H. Maddock*, Esq. Officiating Secretary to the Government of India,

Legis. Cons.
19th Nov. 1838.
Nos. 16 & 17.

(No. 865.)

To *H. Chamier*, Esq. Chief Secretary to the Government of Madras.

(No. 866.)

To *J. P. Willoughby*, Esq. Secretary to the Government of Bombay.

Sir,

I AM directed to request that you will lay before the Right hon. the Governor in Council of Madras (Hon. the Governor in Council of Bombay,) the enclosed printed draft of proposed articles of war for the government of the native officers and soldiers in the military service of the Hon. East India Company; and that you will state, for the information of the Governor in Council, that in the original draft of these articles, there was inserted a provision, in the words quoted in the margin, (A.) to exempt persons professing the Christian religion from amenability to these articles. Objections being made to the provisions of this article by the Law Commissioners, in which the Council of India were disposed to concur, an article, as copied in the margin, (B.) was proposed to be substituted for the original article. When this suggestion was submitted to the Governor-general, his Lordship proposed to introduce an article regarding persons professing the Christian religion, which is copied in the margin, and marked (C).

(A.) Persons professing the Christian religion, wherever born, or of whatever parentage, shall not be amenable to these rules and articles, but shall be subject to the Mutiny Acts and articles of war in force from time to time for his Majesty's forces, or for the Hon. Company's troops, according to the nature of their service.

(B.) That all persons serving with native corps, except such persons as are amenable to the rules and articles of war, for the better government of the officers and soldiers in the service of the East India Company, made by the Crown, under the authority of the Imperial Legislature, shall be amenable to these rules and articles.

(C.) Persons subject to these rules and articles, of European descent, and professing the Christian religion, shall be amenable to courts martial and courts of request, composed of European officers.

2. It appearing that it is in the army of the Bengal presidency only where any distinction has been made in the trials of Christians, on account of their religious persuasion, and that no such practice is understood to have ever prevailed in the armies of Madras and Bombay, a revised article was proposed by the fourth ordinary member of Council, in modification of those previously suggested, and so drawn as to maintain the practice at present prevailing in the armies of the different presidencies; that article, marked (D.) is inserted on the margin. In the printed draft now transmitted, all mention of a distinction between Christians and others amenable to the articles has been omitted, and none of the proposed forms of an article on the subject have been adopted. The reason of this omission is, that the Hon. the President in Council entertains great doubts of the expediency of declaring any such distinction, particularly in the armies of Madras and Bombay, where it is understood it never existed, and where Christians are more numerous than in the Bengal army.

(D.) All persons of the descriptions mentioned in the last article professing the Christian religion, are to be governed by these articles, save that in the trials of such persons by courts martial, the usage of the presidency to which they belong, touching the constitution of the court martial, shall continue to be followed.

3. In the latter army there is no legal provision for such distinction, but in conformity to a General Order of the Commander-in-chief, dated the 6th July 1802, it has been ordinarily made. The following is a copy of the General Order in question:—

"The Commander-in-chief directs that in future all drummers, fifers, and soldiers of every description professing the Christian religion, whether born in Europe or India, and without reference to their parentage, be tried on any crime of a military nature which may be preferred against him by courts martial composed of European commissioned officers only."

No. II.—Part 1.
Articles of War.

4. A necessity for the early enactment of the proposed articles of war having been urged by the Commander-in-chief, the exigency of the case prevented his Honor in Council from deferring the publication of the draft till a reference could be made to the subordinate governments, in order to ascertain their sentiments on the expediency of inserting an article of the nature of any of those which have been under the consideration of the government of India in a military code, applicable to the armies of all the presidencies. It was deemed best to publish the draft without any article containing a provision of this nature, and to ascertain from the subordinate governments what is considered likely to be the effect of legalising any distinction between Christians and others in the description of courts by which they are liable to be tried; and I am now directed to solicit the early communication of the sentiments of the Right hon. the Governor of Madras (Hon. the Governor of Bombay,) on this subject.

I have, &c.

Fort William,
19 November 1838.

(signed) *T. H. Maddock*,
Offg Secy to the Govt of India.

Legis. Cons.
19th Nov. 1838.
No. 18.

FORT WILLIAM, Legislative Department, 19 November 1838.

READ an extract, Military Department, dated 9th July 1838, forwarding copies of papers from General Casement on the proposed articles of war.

Ordered, That a printed copy of the articles of war, as read in Council for the first time on this date, and promulgated for general information, be forwarded to the Military Department, with reference to the extract from that Department of the 9th July 1838, and that the original papers be returned.

No. II.—Part 2.
Articles of War.

—(A.) No. II.—Part 2.—

Legis. Cons.
20 May 1839.
No. 6.

MINUTE by the Hon. *A. Amos*, Esq., dated the 4th January 1839.

Minute on the Articles of War.

CERTAIN draft articles of war, prepared under the direction of the Commander-in-chief, were submitted to the Legislative Council. These were referred (as usual at that period) to the Law Commission, who reported upon them. The Council afterwards passed a series of resolutions with reference to the Report of the Law Commission. Afterwards the Governor-general, being then absent from Calcutta, wrote a paper of observations with reference to the resolutions of Council. In this state the papers came into my hands.

I altered the Commander-in-chief's original draft according to the joint opinions of the Governor-general and the Council, where they coincided; where they differed I divided the knot in the best way I could; and besides remedying some technical defects, I endeavoured to supply an arrangement of the articles, in which respect the original draft was very deficient; but the principal alteration which I made, and in the principle of which I was supported by the Report of the Law Commissioners, was, that the punishment for every offence which might be punished by a court martial should be specifically stated. The military officers have, in every communication, appeared to be desirous of giving to courts martial a general power to punish "according to the circumstances of the case," leaving the extent and nature of the punishment quite indefinite. I think it is probable that they have not considered that several vague expressions of a similar nature, which occur in the articles of war for the Queen's troops, are explained and limited by the Mutiny Act; whereas the present instrument is more properly a Legislative Act in the form of articles, and can only be explained and limited by itself. I think that our 47th Article is as great a concession as we can with propriety make to these military views.

The draft which I prepared was transmitted to head-quarters, and we received it again, accompanied with observations by the Governor-general and the Commander-

mander-in-chief. The suggestions contained in these observations were assented to by the Council, with exception of what related to the clause concerning the trial of Christians, upon which subject the Council made inquiries of the governments of Madras and Bombay.

The articles were printed according to what it was considered had been concurred in by all parties, omitting only the clause relative to Christians, which was reserved for further consideration.

Upon the articles being published, I collected many suggestions and criticisms from the newspapers, and in private conference, all of which I sent to head-quarters, and upon these the Judge-advocate and General Casement have expressed their views. The views of these officers I have, I believe, closely adopted, with the exception only of what regards solitary confinement for the higher species of offences. Besides alterations in the printed draft arising out of the letters from head-quarters, I have made, in conference with Captain Birch (who has had considerable experience in the department of Judge-advocacy), or pursuant to his notes, sent herewith, several other alterations in the printed draft. But, except as mentioned below, I should propose to leave all the alterations in the printed draft optional with the authorities at head-quarters; and thus a single reference, which will be essential for the Governor-general's agent, may suffice for all purposes.

Should no objection be made in Council to leaving the alterations in the printed draft with this understanding, the Council will only have three matters further to consider.

1. The Commander-in-chief still continues to express regret that military courts of request are not provided for in the articles. It will be recollected that the Law Commissioners and the Council were against including them in articles of war upon principle; but independently of this objection, it appears to me that, the provisions would be too prolix for articles of war, and that the number of questions to be solved would occasion inconvenient delay. It would seem that, according to the views of the Commander-in-chief, the whole subject might be disposed of by a single article, viz. Article 84 of the original draft. But without entering particularly on the subject in this place, I may observe, that I doubt whether the Commander-in-chief has considered the consequences of abrogating (as that article does) the punchayet system of Madras, or of continuing at Madras or Bombay, and still more of introducing by that article into Bengal, the power of stopping pay upon failure of a general execution.

2. With respect to the clause concerning Christians, nothing further can be resolved at present until we receive advices from Madras and Bombay.

3. With respect to clause 73, a very important question arises. At the time when the articles were printed it was supposed that all parties concurred in the article as it stands in the Gazette. Whether this supposition was correct or not is not now material to discuss, the practical question being whether, after the inquiries or discussions to which our printed draft has given rise, and upon a view of the whole subject, we think it right, on the one hand, to exempt non-commissioned officers and soldiers from flogging, or on the other, to subject camp followers to that punishment.

I send round the despatches of the Court of Directors upon the subject, a note by Mr. Robertson, and some private papers. I am no competent judge upon the expediency of the measure, especially upon what I conceive to be the most material question, the effect of a revival of the practice of flogging upon the dispositions of the native army; but shall endeavour to explain our legal position, bearing, however, in mind, that the native community cannot be expected to make any distinction between the legal or illegal acts of government, especially where an illegal act may have governed the usage.

I submit for consideration whether, in the Bengal army, the power of inflicting corporal punishment did not depend on articles of war, in the Madras army on the express terms of a Regulation, Regulation V. of 1827, Articles 5, 19, &c., and in the Bombay army on the general though vague terms of a Regulation, Article 22 of 1827; and that there is strong ground for believing that the General Order which abolished flogging, especially if it be not confined to Bengal (*quod vide*) is void in point of law.

This General Order stands reprobated by the Court of Directors; but on the other hand, the Directors have not ordered it to be recalled, and have suffered a usage to grow up under it.

If we omit clause 73 altogether, we in fact abolish flogging; this, however, may

No. 11.—Part 2.
Articles of War.

be better than expressly abolishing it. The only mean causes which occur to me, are to insert a proviso that the articles are not in any way to alter the existing law with regard to corporal punishment, or to allow flogging for certain offences only, or to give the executive government a power to suspend or reinforce the provision at their discretion.

Please to refer to Sir H. Fane's remarks on Article 72 of the MS. draft revised by him. These remarks are not noticed in Lord Auckland's official letter concerning the same draft. *See* the Governor-general's observations on Articles 78 & 87 of the original draft; also Articles 78 & 87 of the original draft; also paragraph 19 of the resolutions of Council. The Law Commissioners do not appear to have noticed the subject.

(signed) *A. Amos.*

Legis. Cons. 20 May 1839. No. 7.
Note on the proposed Articles of War.

MINUTE by the Hon. *T. C. Robertson*, Esq., dated 7 January 1839.

IT is with the most unfeigned reluctance as well as diffidence that I approach a question to appearance of a purely military nature; one beset, too, with difficulties, and fraught with the most momentous consequences.

Drawn up, as it evidently is, with admirable skill, and subjected as it has been to the scrutiny of many who are well able to judge of the sufficiency of its provisions, I should indeed be happy could I, consistently with my own ideas of duty, avoid recording a single line of comment upon the proposed new military code.

But as I cannot escape from the obligation imposed on me by my situation of joining in its enactment, I may not shrink from the no less imperative obligation of pointing out wherein this code strikes me as being defective.

It would perhaps be more correct to say, that it is in the preliminary inquiry that something appears to me still to be wanting, for I am not yet prepared to suggest the slightest modification of the code itself.

The law that permits the infliction of corporal punishment in the native army cannot, I apprehend, be considered to have as yet been abolished by any legislative Act.

The Rule or Ordinance of the 24th February 1835, can hardly be held to possess the weight and sanction of a law, and therefore, under the terms of the concluding passage of the 73d section of the 3 & 4 Will. 4, the original article of war on this particular point is only now about to be formally repealed.

Under this view of the question, the step which we are called upon to take in passing the new code becomes one of the highest, the most vital importance, and ought not therefore to be ventured on without the most matured and comprehensive deliberation.

As I cannot find that any opinions even have been collected on the practical working of what I must regard as having hitherto been only an experimental measure, I cannot think that the code which is to give irreversible permanence to that very measure is yet ripe for enforcement.

I therefore propose that the sentiments of a limited number of the leading military men at the three presidencies be called for on the important question of what have been the results of the rule exempting the native soldiery from corporal punishment, and what may be those of its perpetuation or rescission.

(signed) *T. C. Robertson.*

Legis. Cons. 20 May 1839. No. 8.

(No. 193.—Military Department.)

From *S. W. Steel*, Lieut.-colonel, Secretary to Government of Fort St. George, to the Secretary to the Government of India, Military Department.

Sir,

I AM directed by the Right hon. the Governor in Council, in transmitting the accompanying extract, No. 192, from the Minutes of Consultation of this date, in reply to your despatch of the 19th November last, No. 865, to the address of the Chief Secretary to government, to request that it may be submitted to the Hon. the

the President of the Council of India in Council, requesting the particular attention of the government of India to the observations upon Article 59, in the letter from the Acting Adjutant-general of the army, dated 18th, and to para. 11 in that of the 20th ultimo.

I have, &c.

Fort St. George,
15 Jan. 1839.

(signed) *S. W. Steel*, Lieut.-Colonel,
Secretary to Government.

(No. 774.)

From *J. R. Haig*, Esq. Acting Adjutant-general of the Army, to the Secretary to Government, Military Department.

Legis. Cons.
20 May 1839.
No. 9.

Sir,

I HAVE the honour, by order of the Commander-in-chief, to submit the following observations on the draft of proposed articles of war for the government of the native armies of the Honourable East India Company, published in the Fort St. George Gazette of the 7th instant, which his Excellency deems that it is of paramount importance should be transmitted for the consideration of the government of India, before the code therein proposed be finally confirmed, or made applicable to the army of this presidency.

Articles 1 and 2.

The declaration and oath prescribed in Articles 1 and 2 are not at all suitable to the native army of Fort St. George, every individual in which has been enlisted and sworn to serve the government with loyalty, and faithfully to obey the orders received from his officers, without specifying, or deeming it necessary to specify, under what circumstances, for which service, or in what country, that loyalty or that obedience was to be manifested; and his Excellency is of opinion that it would be invidious, as well as impolitic, to impose a condition on those who may hereafter enter the army, which has been proved quite unnecessary for those who already fill its ranks; nor would it appear advisable to suggest to the old soldiers that they are not at present bound to proceed on foreign service, still less to remove any such impression after it may have been created by administering a new oath.

His Excellency would, therefore, earnestly suggest, that the oath of allegiance now in use for this army be retained, as simple in its form, yet still sufficiently binding in its conditions, viz.:

"I, , private, do swear that I will serve the government with truth and loyalty, and that I will faithfully obey the orders of all officers set over me; I do also swear that I will never abandon these colours, and that I will defend them with my life."

Article 4, addition suggested.

It is suggested that the words, "and that in any other regiment or corps to which they may have formerly belonged," be added to Article 4.

Article 9.

The specification in the rubric would appear equally necessary in the text of Article 9, to limit its provisions to sentinels alone, instead of the general application it at present bears.

Articles 40 and 41.

The punishments awardable by courts martial, for the offences specified in Articles 40 and 41, are limited by Article 70 to suspension from rank and pay, loss of rank, and imprisonment for four months; it is, therefore, suggested that the word "officer," in Articles 40 and 41, *in toto* be omitted, leaving the offences therein enumerated to come under Article 37, or that "dismissal" be added to the list of punishments in Article 70; for it would appear incongruous to decree that an officer should be dismissed for disgraceful conduct in general, or for breaking his arrest, when no such punishment can be awarded for breaches of Articles 40 and 41, which are alike obnoxious to discipline and repugnant to the character of an officer.

Article 44.

It would appear advisable to insert a provision in Article 44, for the wilful or negligent injury and destruction of the arms, &c. &c. of a comrade, as well as of those entrusted to, or the individual property of, the soldier offending against this article, by inserting the words, "or any of the above articles entrusted or belonging

Addition suggested.

No. II.—Part 2.
Articles of War.

ing to any other non-commissioned officer or soldier," immediately after "regimental necessaries," and before the word "shall."

Article 51. It would seem necessary to redraft Article 51, for, as at present worded, its provisions would appear applicable to all ranks and descriptions of persons; whereas those not amenable to military law could not be punished by a military court; and of those who are amenable, a commissioned officer can only be tried, and consequently punished, by a general and not by any court martial, as is implied in the article as it at present stands.

Article 52. Article 52 makes no provision for the commutation, although it does for the remission and mitigation of punishment awarded by a court martial. This would, in reference to Article 79, appear to have been inadvertently omitted; and the following addition to this article is therefore suggested:

Addition to Article 52, suggested. "And when death shall have been awarded, to commute that punishment to transportation for life, or for any term of years, or to imprisonment, with or without hard labour, for life, or for any term of years."

Article 53. In Article 53 it is provided that a general court martial, held out of the British territories, may consist of five members, if a greater number be not available; in Article 86 it is laid down that such court shall be composed of not less than seven officers. The want of concord in these articles would seem to require amendment.

Article 54. In Article 54 it is laid down that no sentence of a general court martial shall be carried into execution until confirmed by the Commander-in-chief of the forces at the presidency to which the prisoner belongs; by section 86 the officer commanding the troops on service out of the British territories is empowered to confirm such sentence. This disagreement would seem to require correction.

Article 56. The provisions of Article 56 would appear to preclude the possibility of an artillery soldier of the coast army being ever tried by officers of his own arm of the service, as there are no detachments of artillery which consist of four companies, or which amount numerically to that number. In the Straits also, and many other situations, the enactment of this article might have the most prejudicial effect on discipline, when the lapse of time which must occur ere reference could be made to regimental head-quarters is considered.

Article 58, addition suggested. It is suggested that the words "or other" should be inserted after "general," in Article 58, to make its provisions applicable to "all" courts martial.

Article 59. As it is of the utmost importance that minor courts martial should be conducted by officers acquainted with, and fully competent to perform, the duty, particularly in reference to the increased powers which will be vested in such courts under the proposed code; and as it would seem hardly possible that an officer selected casually, with the mere qualification of five years' service, could possess the requisite experience or acquaintance with the nature of the momentous duty imposed upon him, the Commander-in-chief would suggest that the practice which obtains under this presidency, of appointing an adjutant to superintend the proceedings of such courts, should be continued as a general rule; and where the adjutant may not be available, that then an officer of not less than five years' standing, should be appointed to supply his place. The advantage of the plan proposed is, that an officer, whose errors in conducting courts martial are continually pointed out to him by the Judge Advocate-general's department, on the proceedings being supervised, naturally gains an experience and knowledge of the practice and provisions of military law, which can hardly have been attained by an officer who has merely served five years, unless, indeed, his attention has been more particularly directed to that branch of his duty than is at all usual in the service.

Suggestion, that adjutants should superintend minor courts martial.

First omission in Article 59. It would also appear to be an omission that no Judge Advocate is expressly appointed to conduct the proceedings of a general court martial, although his presence is implied in Article 62; nor is it specified by whom the oath to interpret truly is to be administered to the superintending officer, when required to act as interpreter to a minor court.

Second omission in Article 59.

Article 62. In reference to Article 62, no provision is made for the absence of an interpreter at a general court martial.

The

The Commander-in-chief earnestly recommends that the provision in this article, making it unnecessary that oaths should be re-administered at the commencement of a fresh trial, be omitted, for no native, accustomed to our forms of justice, could ever be persuaded that he was indeed under trial before a court the members of which he had not seen sworn as usual; besides which, the provision being absolute, as it now stands a court might continue adjourned for months, and then be re-assembled for a fresh trial. In such case, if it were ever necessary to impose the obligation of an oath on members of a court martial, it would appear equally necessary to renew the solemnity after so long an interval. Provision recommended to be omitted.

But should it be determined to preserve this very objectionable provision, it would seem requisite to alter the form of the oaths administered, and substitute the words, "any sentence which this court may pass until," &c. &c. for "the sentence of the court," &c. &c.; and again to insert a clause to insure secrecy in regard to every, as well the particular, vote or opinion given by the members of the court on the first trial. Necessary alteration in the oaths, if the provision to be retained.

In reference to Article 65 it may be observed, that the term "Ishwar" would not be intelligible to the natives of Southern India generally; and therefore the Commander-in-chief suggests that "Almighty God" be substituted for "Ishwar" in the declaration to be subscribed by Hindoos exempted from taking an oath. Article 65.

The conclusion of Article 66 would seem to imply that the superintending officer at a general court martial is entitled to vote. It appears advisable to remove this ambiguity. Article 66.

In reference to Article 67, it would seem necessary to provide for the number of members of courts assembled under Articles 53 and 86, who shall concur in a sentence of death, ere it can be recorded. Article 67.

That a soldier should be made acquainted with the nature and extent of the charges preferred against him, before he be arraigned on them, appears fraught with so many advantages, and altogether so very advisable, that his Excellency recommends that an addition to Article 68 be made as follows: Article 68.

Addition recommended.

"Every officer, non-commissioned officer, or soldier, shall be furnished with a translation, in Hindoostanee, or other native language more intelligible to him, of the charge or charges on which he may be about to be tried, at least 24 hours prior to the assembly of the court martial.

"Provided always, that no manifest impediment exists to the provisions of the above clause."

His Excellency does not conceive imprisonment to be a punishment which it would be at all advisable to introduce, as applicable to native commissioned officers ever intended to be restored to the service, as it can hardly admit of question that the influence and authority of an officer so situated would be completely destroyed; moreover, the being liable to so degrading a punishment would most materially tend to lessen, if not completely eradicate, that feeling of self-esteem, as a man, and high honour, as a native gentleman, which it has ever been the object of government to instil, and have considered as the concomitants of holding a commission in our native army. His Excellency would, therefore, earnestly recommend that imprisonment be erased from the provisions of Article 70. Article 70.

His Excellency would also suggest that, putting it in the power of a court martial to deprive a soldier, perhaps at the commencement of his career, of all hope of the prospective advantages derivable from service, however lengthened or however meritorious, would appear at the same time to deprive government of all reasonable expectation that an individual so situated would ever become a good or efficient soldier. What incentive, under such circumstances, remains to future propriety of conduct, but the fear of punishment which might attend its absence? And the Commander-in-chief, under a firm conviction that such a check to crime would prove utterly useless, recommends that this clause of Article 71 be modified as follows: "And in addition to any such punishments, may adjudge discharge, involving forfeiture of all claim to pension which might otherwise have accrued to such non-commissioned officer or soldier, from the length or nature of his service." Article 71.

Modification suggested.

Addition of corporal punishment recommended.

The promulgation of a new code for the government of our native troops, would seem the most favourable moment which could occur for the re-introduction of corporal punishment by the lash, in extreme or disgraceful cases.

His Excellency's sentiments on the absolute necessity of the power to inflict this punishment being continued to military authority, have been so fully expressed in a letter from this department, dated 30th September 1837, that it were needless to repeat what may be termed axioms in military government; but his Excellency would, at the present crisis, direct attention to the serious dilemma in which an officer in command of troops evincing an insubordinate spirit on ship-board, must be placed, deprived as he is of any other means of repressing even open mutiny by the instant punishment of a ringleader, except cutting him down. The Commander-in-chief would, therefore, again most importunately urge the necessity of an opportunity like the present being seized to remedy the serious evils which have resulted, by the common acclaim of every soldier of experience, from the abolition of corporal punishment in the army.

Mulct of good-conduct pay recommended to be included.

It would also appear advisable to include the forfeiture of good-conduct pay in the provisions of this article.

Article 76.

The provisions of Article 76 do not appear to confer sufficient power on officers commanding regiments, for the punishment of minor offences; and unless they be very greatly extended, a constant, most unnecessary, and unadvisable recourse must be had to trial by courts martial. But the Commander-in-chief is of opinion, that arbitrary punishment of this description falls more naturally within the provisions of a code of standing orders for the interior economy and discipline of the army, than of an article of war; the one may be readily altered according to the exigencies of service, the other should remain a law, to be changed as seldom as possible. His Excellency therefore recommends that this article be altogether omitted; or if it remain, that it be modified as follows:

Modification recommended.

"In cases of minor offences, a commanding officer may, without the intervention of a court martial, award extra drill for a period not exceeding 15 days, extra duty to the extent of eight hours, restriction to barrack limits for a period not exceeding 15 days, confinement in a defaulter's room or solitary cell for a period not exceeding seven days, removal from staff situations, such as colour and hospital havildar, or reduction from lance or acting appointments; and none of these descriptions of punishments shall, to the above limited extent, be awardable by sentence of a court martial."

Article 78.

It is not the practice for the soldier of the Bengal native army to bring his family to regimental head-quarters, and consequently the provisions of Article 78 would be productive of little inconvenience to him, and of none to his family; but with the Madras sepoy the case is widely different; not only are his wife and children present with him, but generally every individual of his kindred also, who may be at all dependent upon him for support. No British soldier is more improvident than he of Southern India; and unless therefore conviction were sure to follow confinement on suspicion of an offence, the utmost distress and most severe punishment would inevitably succeed the placing a soldier under restraint, whether he were guilty or the reverse; and in all cases the innocent would suffer alike with the guilty. The punishment by this mode of one defaulter, must involve that of perhaps eight or ten persons who had committed no offence.

In Bengal the soldier, if acquitted, would be enabled to make his usual remittance to his family at the usual period, or if it were temporarily delayed, the circumstance could be of little or no moment; but in this presidency, the distress involved by the provisions of the article under review would be incalculable, and tend more to create discontent and disaffection among the native soldiery than almost any other measure which could be adopted. The European soldier is very properly mulct of a portion of his pay when under confinement; it not only prevents the accumulation of a fund to supply the means of dissipation, and consequent liability to the commission of crime on his release, but the punishment falls on the guilty alone; his wife and family are provided with an independent support from government; while were Article 78 made applicable to the Madras sepoy, in punishing an offender you starve his family, or, what is nearly as bad, force them to incur a debt, the pressure of which on the sepoy adds most heavily to that punishment, which in the judgment of a court martial was amply commensurate with the offence committed.

The

The Commander-in-chief therefore most earnestly recommmends that this article be altogether omitted, or made applicable to the Bengal army alone. Article recommended to be omitted.

In reference to Article 79 it would appear necessary to define the authority which shall be competent to commute a sentence of death, as proposed in the observations on Article 52. Article 79.

Many of the principal stations at which the Madras troops serve, viz. Kamptee, Jaulnah, and Seconderabad, are situated at such a distance from any public prison within the frontier of this presidency that it would be exceedingly inconvenient to send individuals who might be sentenced to imprisonment by courts martial to be confined as directed by the provisions of Article 80, and therefore an exception of those stations, or some other amendment of this article, would appear necessary. Article 80. Exemptions recommended.

The provisions of Article 83, although perfectly applicable to a soldier of the Bengal army, whose family or heir is seldom if ever with him in camp or quarters, would be deemed a most inquisitive and disgusting inquiry into the private family affairs of a sepoy of the coast army, whose heir, as was before observed, is generally at the head-quarters of his corps. It has ever been the practice of the Madras presidency to permit the heirs and family of the deceased to take, or rather retain, charge of his property; the Commander-in-chief therefore strongly recommends that this usage be retained, and that the words "if no heir be present," should follow the words "killed in the service." Article 83. Addition recommended.

The extensive ramification of relationship which exists in a native corps under this presidency, and consequent interchange of pecuniary obligations, would render it utterly impossible to adjust satisfactorily the debts in camp or quarters of a deceased individual, as proposed in Article 84; such adjustment had better remain, as has hitherto been the case, with the heir; and his Excellency therefore recommends that the words "the debts of the deceased, viz." and "his debts in camp or quarters," be omitted, and the words "or heir" inserted before "executor" in the commencement of this article. Omission recommended.

A clause or additional article would appear required to provide for the safe custody of the effects, or proceeds of sale of the property of persons, whether sutlers or others, not in the service, who may die while residing within the limits of a military bazaar. Additional clause recommended.

In Article 91, it would seem necessary to specify that private as well as public camp followers are liable to trial by courts martial under these articles. Article 91, specification recommended.

Should the right of appeal to European courts martial, which now exists under Regulation III. of 1829, be abrogated, Indo-Britons will, if not of legitimate birth, be subject to trial by natives alone, although widely different from them in manners, habits, and feelings. This class of people are to be found in all ranks of the army, and are eligible to hold commissions. It appears repugnant to every principle of justice, that the mere accident of legitimate or illegitimate birth should constitute the right to what may be termed a fair trial, or that the still more fortuitous circumstance of station in life should subject the one brother to a native, and the other to a European tribunal. If the native soldiery themselves hailed as a boon, and eagerly claim, on all important occasions, the privilege of trial by their European officers, to deprive East Indians of the right to trial by those who alone can be denominated their peers, and to subject them to a tribunal from which even men of the same habits, feelings, religion, and language, gladly appeal, would appear oppressive; and the Commander-in-chief therefore strongly recommends that all East Indians or Indo-Britons may be exempted from the provisions of Article 91, and declared subject to trial only before European courts martial, and under the European articles of war. East Indians recommended to be exempted from trial by native court martial, or under those articles.

It may also be remarked that the enactments regarding debts, of Article 7, sect. 9, of the present, are totally unprovided for in the proposed articles of war; and that a verbal inaccuracy has been retained in Article 35, which would make it appear that a false return might be called for. This can easily be corrected by the substitution of the word "any" for "such" in that article. Verbal inaccuracy in Article 35.

Adverting to the serious detriment to the service which sometimes arises from soldiers contracting heavy debts in the sudder or general bazaars of stations, his

No. II.—Part 2.
Articles of War.

Excellency, strongly recommends that an Order of Government, similar in substance to the provisions of Article 111 for the government of Her Majesty's army, be framed and promulgated; such a provision cannot with propriety be entered in the articles of war for the government of the native army, as its penal enactment, by which alone it finds a place in the Bengal articles, can only be applicable to Europeans, who will not be subject to the proposed code.

I have, &c.

Adjutant-General's Office,
Fort St. George, 18 Dec. 1838.

(signed) *J. R. Haig*,
Acting Adjutant-general of the Army.

(True copy.)

(signed) *S. W. Steel*, Lieut.-Colonel,
Secretary to Government.

(No. 785.)

Legis. Cons. 20 May 1839 No. 10.

From *J. R. Haig*, Esq. Acting Adjutant-general of the Army, to the Secretary to Government, Military Department.

Sir,

19 Nov. 1838. No. 865.

I HAVE the honour, by order of the Commander-in-chief, to acknowledge the receipt of Extract from Minutes of Consultation of the 18th instant, No. 4178, communicating copy of a letter from the officiating secretary to the government of India, and calling for his Excellency's opinion upon the subject of exempting individuals professing the Christian religion from amenability to the articles of war about to be promulgated for the government of the native troops.

2. The Commander-in-chief's sentiments upon this question, as far as it affects East Indians, have already been recorded in the letter to government from this department, of the 18th instant, No. 774, but as the present reference extends beyond East Indians, and includes all who profess the Christian religion, it is necessary for his Excellency to submit some further remarks upon the subject.

3. Hitherto no distinction has ever been made in this army in the trials of natives on account of their religious persuasions, and native Christians, in common with all others, have been always held amenable to trial by native courts under the native articles of war.

4. As men of this class are purely native in their habits, language, and associations, it does not appear to the Commander-in-chief that it would be of any advantage to them to be exempted from the usual course of trial, and as there is no necessity for any change, his Excellency considers it preferable to leave the established practice of the service in this respect unaltered.

5. The case of the East Indians in the native army is however altogether different. Under a General Order of the 16th June 1828, quoted in the margin, individuals of this description, if of legitimate birth, are declared entitled to trial by European courts and under the European articles of war, but if illegitimate, they are left to be dealt with as natives.

It having been legally decided that the legitimate descendants of Europeans (being British subjects), married to native women, are to be considered themselves as British subjects, his Excellency the Commander-in-chief directs that commanding officers will be guided accordingly in bringing to trial soldiers of the above description, who are entitled to be tried by a court composed of European officers, and according to the provisions of the articles of war for the government of the European troops.

6. This invidious distinction the Commander-in-chief earnestly desires should be abolished. The class affected by it includes nearly the whole of the warrant and subordinate grades of the medical department, many non-commissioned staff, and a numerous body of trumpeters, farriers, drummers, and musicians; all have been brought up as Europeans, either in the government or other English schools, and many of them, as in the case of medical warrant officers, are of highly respectable character and good education, nearly as distinct in every respect from the natives as Europeans themselves.

7. The injurious nature of the distinction will be self-evident when it is remembered that the two descriptions are unavoidably mingled together in every branch of the service, so that there is not a single regiment in which the trumpeters or drummers, for example, though all of precisely the same class, are amenable to the same articles of war. Under the existing regulations, indeed, the evil effects of this anomaly are partially obviated by the option which is allowed of appeal for trial by the European court, but the men are still tried as natives, and under the native article of war.

8. In

8. In the European artillery and infantry, in which there are East Indians, some serving in the ranks and others as drummers and musicians, the distinction has never been admitted, and all, for obvious reasons, have been considered amenable to trial as Europeans.

10. The proposed articles of war, as at present framed, however, deprive both the legitimate of their privilege to be tried as Europeans, and the illegitimate of their right of appeal, subjecting all alike to trial as natives; and if Article 91, sect. 6, remains unaltered, no local regulations of a subordinate authority can relieve them from its provisions.

11. The Commander-in-chief would therefore recommend in the strongest terms that all East Indians without distinction should be declared amenable to trial only by European courts martial, and under the European articles of war; and with this view his Excellency would suggest a distinct Act to that effect should be passed by the government of India, and that Article 91 of sect. 6 should be modified by the addition to the penultimate clause of the words "and who are liable to be tried as natives." The Article will then stand as in the margin, and this will have the advantage of not leaving a question of such importance dependent upon the undefined usage of each presidency.

Art. 91.—All officers, non-commissioned officers, soldiers, all drivers or farriers, trumpeters and drummers, all hospital attendants, sub-assistant surgeons and dressers, all artificers and labourers, sutlers, camp-followers, or others attached to or serving with any part of the army, and who are liable to be tried as natives, are to be governed by these articles, and subject to trial by courts martial.

The draft of the proposed articles of war is herewith returned.

I have, &c.

Adjutant-general's Office,
Fort St. George, 20 Dec. 1838.

(signed) *J. R. Haig*,
Acting Adjutant-general of the Army.

(True copy.)

(signed) *S. W. Steel*, Lieut.-Colonel,
Secretary to Government.

MINUTE by the Commander-in-Chief.

Legis. Cons.
20 May 1839.
No. 11.

As this very important subject does not seem to admit of further delay, I can only briefly and faintly touch upon the opinions recorded by my predecessor in the Acting Adjutant-general's letter of the 18th ultimo.

I would urgently recommend that the declaration and oath to be used at each presidency may be left to the local authorities. The sepoys now in the ranks will imagine that some change is intended which does not at first meet the eye, and I am afraid that they are disposed to think that it is intended to narrow their privileges, whilst we extend their services.

Art. 9. I agree with Sir P. Maitland that sentinels alone should be specified in this article. It is copied from Her Majesty's articles, but the want of specification is looked upon to be a defect in them.

Art. 44. This addition proposed by Sir P. Maitland will be useful in many cases, but I do not think it very important.

Art. 51. It will be advisable, in my opinion, to reconsider this article.

Art. 52. The Commander-in-chief of the Forces for the time being may mitigate or remit the punishments awarded by courts martial, but as he is not authorized to commute, is the substitution of transportation for death held to be a mitigation? or must the sentence be inflicted unless a pardon be granted?

Art. 59. I heartily adopt Sir P. Maitland's sentiments on this article; but I think a service of five years rather too short to give an assurance that the superintending officer has the requisite experience; I would propose that seven years be substituted.

Art. 60. I earnestly recommend that this article should be so worded as to render the attendance of an interpreter to all courts martial imperative, and that when the duly appointed interpreter of a regiment may not be available, the convening officer shall be held responsible that a duly qualified commissioned officer be appointed to the duty, or if such may not be had, then any other person in all respects competent.

Art. 62. I think that the opinion expressed by my predecessor respecting the re-administration of the oath is sound and judicious.

No. II.—Part 2.

Articles of War.

Art. 65. Upon the same grounds that I think the sepoy's oath on enlisting should be left to the local authorities, I recommend that the witness's oath should be framed at each presidency in communication with the Court of Sudder Adawlut.

If "Ishwar" be unintelligible, are we quite certain that "Almighty God" may not also be supposed to give the oath a Christian character, depriving it of all weight, whilst it raised suspicion.

Art. 70. I entirely concur in Sir P. Maitland's opinion upon this article, and would urge the propriety of expunging the last sentence.

Art. 71. It would in most cases be more beneficial to the service, and frequently to the individual, to discharge him, than to deprive him of all hope of prospective advantage.

Art. 72. As this is the first time that corporal punishment has been brought before me in a shape admitting of remarks, I embrace it to state my opinion that its abolition has been productive of the worst consequences to the discipline of the native army, and probably of serious discontent amongst the European soldiery. The sooner it can be restored the better, and in view to that great object I think the 72d Article might run thus:

"It shall be competent to any court martial to sentence a soldier to be flogged, unless when corporal punishment is restricted under the orders of the Supreme Government. No non-commissioned officer to be sentenced to corporal punishment without having been previously reduced to the rank and pay of a private sentinel, but camp followers, &c."

The agitation of this question has done very much injury to the army at home; but with every desire to relieve the soldiery from such a disgraceful punishment, it has been found unsafe, if not impracticable to do so.

The process with the soldiers in Europe seems now to be, insolence, insubordination, mutinous conduct, mutiny (or, in a late case, murder):—Transportation.

With the native army, insolence or intentional neglect, insubordination, mutinous conduct:—Discharge.

Revenge against the prosecutor or some supposed enemy after the lapse of a few months, murder:—Capital Punishment.

In too many cases two lives are sacrificed by this baneful relaxation.

The Acting Adjutant-general informs me that there have been 11 instances of native officers being murdered by sepoys within the last 39 years, and that eight of the 11 have occurred since the abolition of corporal punishment.

I cannot avoid asking myself frequently where and how will this end.

Every day's experience proves to me that the system is working great evil.

Art. 76. I entirely agree with my predecessor, in his opinion that these minor punishments should be left to the military authorities.

Art. 78. I hope that Sir P. Maitland's remarks upon this will produce the desired effect.

Art. 79. Appears to be at variance with the 52d Article, as already remarked.

Art. 80. This will necessarily be re-considered.

Art. 83. My predecessor's recommendation seems to merit attention.

Art. 86. Some of the principal stations of this army are in the territories of allied states, and the inhabitants or residents of the cantonments are British subjects; do the provisions of this Article apply equally to them and to the subjects of the allied states?

Art. 91. No doubt exists in my mind on this point, but as the insertion of a word will remove it in every case, it is advisable to introduce the word "private."

4. 53, 54. 56. 58. 62. 66 & 67.

The small alterations recommended by Sir Peregrine Maitland will no doubt receive all due attention.

7 January 1839. (signed) *J. Nicolls.*

(True copy.)

(signed) *S. W. Steel,*
Secretary to Government.

Legis. Cons. 20 May 1839. No. 12.

MINUTE by the Commander-in-Chief.

8th January 1839.

HAVING given my best, though necessarily hurried attention to the despatch from the Government of India, dated 19th November 1838, I am of opinion that the clause marked (A.) in that letter is best calculated to uphold the pretensions of our numerous Indo-British fellow-subjects.

I should be exceedingly sorry to see the warrant and subordinate officers of the army rendered amenable to these native articles of war, and of course to trial before courts composed of native officers.

(signed) *J. Nicolls.*

(True copy.)

(signed) *S. W. Steel,*
Secretary to Government.

(No. 192.—Military Department.)

Legis. Cons. 20 May 1839. No. 13.

EXTRACT from the MINUTES of CONSULTATION, 15th January 1839.

THE following papers are ordered to be recorded.

Here enter No. 5016, 18th December 1838, No. 774. — From the Acting Adjutant-general of the army.

Here enter No. 5035, 20th December 1838, No. 785. — From the Acting Adjutant-general of the army.

Here enter No. 135, 7th January 1839. — Minute by his Excellency the Commander-in-Chief.

Here enter No. 136, 8th January 1839. — Minute by his Excellency the Commander-in-Chief.

The Right honourable the Governor in Council observes that his Excellency the Commander-in-chief concurs generally in the observations of his Excellency Sir Peregrine Maitland upon the draft of native articles of war. His Lordship in Council is pleased to direct that copies of all the documents above recorded be transmitted to the Government of India, in reference to the letter No. 865, dated 19th November last, from the Secretary in the Legislative Department, with the following additional remarks:

Art. 1. If the Legislative intends to invest a court martial with authority to punish "any" person using menacing words, signs or gestures in its presence, there appears to be no objection to the article as it stands. If, however, military men only are in view, it would be advisable that the wording of the article should be conformable to the intention: thus, "any person 'amenable to these articles' using, &c." With respect to the objection taken to an officer being summarily punished by a court martial not having jurisdiction to try him, it may be said that the court only punishes a breach of the peace; and "every" court martial has authority to impose an arrest on an officer for disturbing its proceedings, so that it may probably be intended to give additional power to a court martial inferior to general, under the circumstances alluded to.

Art. 54. Unless the words "or any other offence," in Article 86, are intended to include "breaches of discipline," the authority given to the officer commanding the troops to confirm the sentence of a general court martial convened under Article 86, refers to civil offences only; and even should the term "any other offence" include breach of discipline, it would appear to be of consequence to render the meaning clear.

Art. 56. Native artillery soldiers when at head-quarters will naturally be tried by their own officers; when at an out station they will be liable to be tried by a court martial composed of mixed officers. At Penang, Singapore, and Malacca, a native artillery man, whose offences may not require to be brought before a general court martial, will be tried by a garrison court martial, the sentence being confirmed by the officer commanding the troops.

Art. 65. The objections made to the specific term in the draft of the articles of war, as well as to that proposed by Sir Peregrine Maitland, would perhaps be obviated by directing that the term to be used in the declaration shall be that by

No. II.—Part 2.
Articles of War.

which the Supreme Being is acknowledged or best known to the class or sect to which the subscribing witness belongs.

Art. 68. The addition recommended by his Excellency the Commander-in-chief to be made to this article is provided for under this presidency by a local general order, but it may be advisable that it should be included in the code.

Art. 78. If commanding officers of divisions and forces beyond frontiers had power to convene general courts martial, there would be little delay in bringing any offender to trial, whether officer or soldier, and the difficulty anticipated by his Excellency the Commander-in-chief would be obviated, the regulation being in every other respect likely to be most beneficial.

Art. 80. The object proposed by his Excellency the Commander-in-chief would appear to be best attained by substituting for the concluding proviso of this article some other limitations, such as "within such presidency, or under British authority within the territory in which the prisoner may be serving," or to that effect.

If the clause marked (A.) be adopted, it should specify that the exemption is confined to Indo-Britons, and does not extend to sepoys professing the Christian religion, who are in no other point distinguished from their native fellow-soldiers.

(True extract.)

(signed) *S. W. Steel,*
Secretary to Government.

(No. 236 of 1839.—Judicial Department.)

Legis. Cons. 20 May 1839. No. 14.

From *J. P. Willoughby*, Esq. Secretary to the Government of Bombay, to the Officiating Secretary to the Government of India, in the Legislative Department.

Sir,

In acknowledging the receipt of your letter dated the 19th of November last, No. 866, forwarding for the consideration of this Government the printed draft of proposed articles of war for the government of native officers and soldiers in the military service of the Honourable East India Company, I am directed by the Honourable the Governor in Council to transmit, for the purpose of being laid before the Honourable the President in Council, the accompanying copies of a letter from the Adjutant-general of the army, dated the 17th ultimo, and of its enclosure, submitting the opinion of the Major-general commanding the forces on the points noticed in your letter.

I have, &c.
(signed) *J. P. Willoughby,*
Bombay Castle, 21 January 1839. Secretary to Government.

(No. 46.)

Legis. Cons. 20 May 1839. No. 15.

From Lieutenant-Colonel *S. W. Powell*, Adjutant-General of the Army, to *J. P. Willoughby*, Esq. Secretary to Government of Bombay.

Enclosure.

Sir,

I have the honour to acknowledge the receipt of your letter of the 9th instant, No. 82, with its several accompaniments, and am directed by Major-General Sir J. F. Fitzgerald, K. C. B., to transmit to you, for the information of the Honourable the Governor in Council, the enclosed letter from the Judge Advocate-general of the army, submitting that officer's opinion on the point noticed in Mr. Secretary Maddock's communication.

After an attentive perusal of the whole of the papers connected with the point under discussion, Major-General Sir J. F. Fitzgerald, K.C.B., desires me to state that, in his opinion, native Christians ought to be tried by European courts martial, subject to the punishments ordered for the native army, for the following reason:

If brought before a court constituted of native officers, it is not improbable that the fact of having apostatised, particularly in the instance of a man of good caste, might lead the members of the court either wholly or partially to be prejudiced against

against the prisoner, and the Major-general considers it would be a matter of serious consequence if a native soldier was by any possible construction permitted to believe himself liable to punishment by embracing the Christian faith; by the addition of such a system it would be in vain to look for proselytes to Christianity in the native army.

I have, &c.
(signed) *S. W. Powell*,
Lieut-Col, Adjt-genl of the Army.

Adjutant-general's Office, Bombay,
17 January 1839.

From Major *William Ogilvie*, Judge Advocate-General, Poona, to the Adjutant-General of the Army.

Sir,

I HAVE the honour to acknowledge the receipt of, and to return, Mr. Secretary Willoughby's letter of the 9th instant, accompanied by a copy of one from the officiating secretary to the government of India, in the Legislative Department, together with the printed draft of the proposed articles of war for the government of the native officers and soldiers in the service of the Honourable East India Company, on which I beg to submit, through the Major-general commanding the forces, the following observations.

Having fully considered the point submitted in Mr. Secretary Maddock's communication, I beg to state that an order issued by the Honourable the Governor in Council of this presidency, under date the 12th June 1823, is still in force, by which it is directed that "all persons the offspring of an European parent, whether father or mother, and their descendants professing the Christian religion, who are subject to military law, shall be tried when accused of any offence by courts martial composed of European officers."

Military Regulations, *see* XX. Art. 87, p. 140.

On comparing the foregoing order with that issued to the Bengal army on the 6th July 1802 (both of which at present stand on the same degree of authority), it will be observed that the former is more limited in the object of its operation than the latter; and I am enabled to state, that these were intended to be restricted to the class of persons termed *half-castes*, and their descendants, without reference to or in any way affecting others of the native troops, of whatsoever profession of religion they might be, and the order in question has hitherto, as occasion required, been acted on with good effect. I therefore beg to offer my opinion that it should receive a legislative sanction under the proposed enactment marked (D.) in the margin of the second paragraph of the letter under consideration. But as circumstances may occur in which it may be proper and equitable to extend the principle at present in force under this presidency, I am also induced to suggest, that the mere constitution of courts martial should be made subject to such further future arrangements as may appear advisable to the Commander-in-Chief of the respective armies.

I have, &c.
(signed) *William Ogilvie*, Major,
Judge Advocate-general.

Poona, 14 January 1839.

(True copies.)
(signed) *J. P. Willoughby*,
Secretary to Government.

MINUTE by the Honourable *A. Amos*, Esq., 8th February 1839.

Legis. Cons. 20 May 1839. No. 16.

I CIRCULATE the papers recently received from Madras, and still more recently from Bombay, on the subject of the articles of war.

Resolutions of Council seem necessary on the two main points of the trial of Christians, and on flogging. The other suggestions (30 in number) from Madras may be disposed of without difficulty, in manner as I shall propose next week.

On the first point, I suggest the following article:

"All persons born of an European parent, father or mother, and whether such father was legal or reputed, and their descendants professing the Christian religion,

No. II.—Part 2.
Articles of War.

religion, shall not be amenable to these articles; but if belonging to the description mentioned in Art. , shall be subject to the Mutiny Act and articles of war in force from time to time for the better government of the officers and soldiers in the European service of the East India Company." I do not much like adverting to illegitimacy on the face of the article. This article may be also open to criticism, as not providing for the illegitimate son by a native woman; though, on the other hand, providing for such a case might savour of too much subtlety. It is to be observed that, according to English law, a man begetting an illegitimate child is not legally its father. If courts martial would consider him the "father," within the meaning of articles of war, it would be better to leave out the words "whether such father be legal or reputed."

I enclose some observations of Captain Birch, upon the Madras papers, in regard to the matter in question.

The forms (A.) (B.) (C.) (D.) are among the Madras papers.

On the subject of flogging, as well as that of trial of Christians, I have endeavoured to select from the mass of papers such as may be useful for discussing these matters.

8 February 1839. (signed) *A. Amos.*

Legis. Cons.
20 May 1839.
No. 17.

MINUTE by the Honourable *W. W. Bird*, Esq., dated 22 February 1839.

I AM no advocate for the infliction of corporal punishment, and should be glad to see it universally abolished if it could be done without giving rise to still greater evils; but when I perceive that with the strongest desire to abolish it at home, the British Parliament have found it unsafe or impracticable to do so, and that the highest military authorities in this country have recorded their opinion *, that the suspension of the punishment in question, by the Orders in Council of the 24th February 1835, has been productive of the worst consequences to the discipline of the native army, I feel it incumbent on me to pause before concurring in a measure which will render flogging no longer a legal punishment. If such punishment can ever be necessary either for the suppression of mutiny or for the maintenance of discipline, in times of peace or of war, whether within or beyond the frontiers, the proper authorities ought to have the power of legally resorting to it; I think, therefore, that corporal punishment should be continued a part of the new articles, as heretofore, and that the Orders in Council, above referred to, should be modified to such an extent as, on due consideration of the evil consequences complained of, may be deemed necessary and proper.

(signed) *W. W. Bird.*

Legis. Cons.
20 May 1839.
No. 18.

MINUTE by the Honourable Colonel *W. Morison*, President of the Council of India.

THE discontinuance of the power to inflict corporal punishment in the native army was certainly found to be attended with serious inconvenience in the late campaign in Goomsur, as shown both by the Honourable Mr. Russell's Report, and by the papers submitted to this government by his Excellency the Commander-in-Chief of India. The same inconvenience was felt on a more recent occasion, when the 3d Regiment of Madras Cavalry were in a state of insubordination at Oholapoor; and I can hardly conceive a state of things more to be deprecated than that while the native portion of the army of India has been exempted from punishment by the lash, the European portion is still liable to its infliction.

Dated

Under date

On these grounds I should go far in concurring with my colleagues, that the power of inflicting corporal punishment in the native army would be highly desirable, if we could with safety retract the exemption conferred by the General Order of the government of India, dated the 24th February 1835.

It

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* *Vide* Minutes of Sir H. Fane, dated 20 October 1836, 1 November 1838, 6 November 1836. Also, for the sentiments of Sir Peregrine Maitland, *vide* Letter from the Acting Adjutant-general of the Madras army, dated 18 December 1838, referring to a letter from the same department, dated 30 September 1837. Also a Minute from Sir Jasper Nicolls, dated 7 January 1839.

It is true that that Order has not the legal effect of an Act, and that the articles of war which sanction the use of the lash is still legally in force; it may, therefore, be supposed that we might with propriety repeat in the new articles of war the former clause now in abeyance under the operation of the General Order in question, but we could hardly do this without cancelling that Order, a proceeding which would doubtless have a powerful effect on the minds of the native army at large.

The great difficulty consists in going back, which I think cannot be advisable without the occurrence of some emergency to call for the measure; and, from all I can learn, the same grounds for reviving the old rule do not exist alike in the three armies.

I would therefore rather forego the advantages, if there be any, of a general code for the native armies of India, leaving their discipline to be conducted under the existing code of each, respectively, rather than agitate this important question at present, when we have a great army in the field both from Bengal and Bombay, and when there seems some probability of a still more extensive call for the services of the native troops, even beyond sea. Some indeed may be of opinion that this state of affairs affords only stronger grounds for the revival of the power of inflicting corporal punishment. I own I am inclined to a different opinion, and think it would be prudent to consult the home authorities before we revive that power, by the enactment of any new articles of war, for the purpose.

Calcutta, 9 March 1839. (signed) *W. Morison.*

(No. 1,207.—Military Department.)

From Lieutenant-colonel *S. W. Steel*, Secretary to the Government of Fort St. George, to the Secretary to the Government of India, Military Department.

Legis. Cons. 20 May 1839. No. 19.

Sir,

In continuation of a despatch from this department, of the 15th January last, No. 193, I am directed by the Right hon. the Governor in Council to forward herewith, for submission to the Government of India, copy of a letter from the acting register to the Court of Foujdarree Adawlut, dated the 4th March 1839, bringing to notice the inapplicability of the term "Nizamut" to the Court of Foujadrree Adawlut at this presidency in the proposed new articles of war, and suggesting the insertion of the words "and Foujdarree," after "Nizamut."

I have, &c.

(signed) *S. W. Steel*, Lieut.-colonel,

Fort St. George, 14 March 1839. Secretary to Government.

(No. 42.)

From *C. P. Brown*, Esq. Acting Register, Foujdarree Adawlut, Fort St. George, to the Chief Secretary to Government.

Legis. Cons. 20 May 1839. No. 20.

Sir,

Adverting to Article 79 of the proposed new articles of war, draft of which was published in the official gazette of the 7th December last, I am desired to request you will bring to the notice of Government the inapplicability of the term "Nizamut" to the Court of Foujdarree Adawlut at this presidency, and accordingly to suggest, for the consideration of the Right honourable the Governor in Council, the propriety of recommending to the Supreme Government the insertion of the words "and Foujdarree" after "Nizamut," without which it appears to the judges that it will be incompetent to them to give effect to the sentences of transportation referred to in the article now under observation.

Enclosure.

I have, &c.

Foujdarree Adawlut, Register's-office, 4 March 1839. (signed) *C. P. Brown*, Acting Register.

(A true copy.)

(signed) *S. W. Steel*, Lieut.-colonel, Secretary to Government.

Legis. Cons.
20 May 1839.
No. 21.

NOTE by Major-general *Casement.*

I HAVE attentively considered these articles of war, and they appear to me, as a whole, calculated in a great measure to effect the desired object of a discriminative and well-arranged code for the guidance of courts martial in the native army.

Upon the two principal and very important points on which my opinion is desired, I propose to express my sentiments after having intermediately noticed some of the other portions of the articles.

I.—Art. 18. I think this article might be advantageously altered by transposing the words, "as a general court martial shall award," from the place they now occupy to the close of the article. It is of course intended that the several punishments shall be awarded by a court martial; the proposed transposition of the words will make that intention clear.

The "hard labour" contemplated here is, I presume, the usual hard labour in irons on the roads imposed on convicts in the custody of the civil power. I would suggest therefore that the intended punishment be expressed in full, in the words I have underlined, as it is desirable that the punishment to be undergone should be both distinctly understood by the court which passes the sentence and clearly expressed in the terms of such sentence. Besides which, another advantage to be gained by this slight addition to the article will be, that the wording of all sentences under it will be alike, whereas hitherto the practice has been various, one court sentencing to hard labour, another to hard labour in irons, a third to hard labour on the roads, or to labour in irons on the roads; all evidently purporting to be the same description of punishment.

Art. 19 & 71. In these also I would suggest the additional words in the matter of hard labour.

With regard to Article 19, the punishment of dismissal and fine appear to be peremptorily laid down, so that a court martial could not but award those punishments. Yet, in the closing provision of discretionary punishment awardable under Articles 70, 71, there appears a discrepancy which I apprehend will create misconstruction and confusion in practice. The offender being actually dismissed the service, cannot be made to suffer any of the punishments awardable under Article 70, nor some of those provided in Article 71, such as reduction, or degradation of rank, or forfeiture of additional pay while serving. And with regard to the remaining discretionary punishments provided in Article 71, they are inconsistent with those laid down in Article 19 itself; for Article 19 provides imprisonment, with hard labour and solitary confinement, for a term which may extend to three years; whereas Article 71 provides imprisonment for four months, and imprisonment with hard labour, &c. for two months.

I am aware that the specification of imprisonment and its accompaniments was so far necessary in Article 19, that Article 71, which provides that species of punishment, does not apply to commissioned officers, which Article 19 does. But then, by the wording of this article, all classes of offenders are brought under its provisions; and though regarding commissioned officers there may be no difficulty after a little reflection, yet, as regards non-commissioned officers and soldiers, there will, I think, eventually be confusion, which an alteration of the article might obviate.

It appears to me very desirable that offenders under Article 19 should be peremptorily dismissed the service; I would therefore propose to leave that provision in the article as it now stands. The only change I would suggest is the omission of the final clause, "or shall be punished according to the sentence of such court martial, as hereinafter mentioned."

Art. 25. The margin does not correspond with the body of the article.

Art. 36. I observe that a suggestion to insert dismissal is noted opposite this article. I think the proposed insertion an improvement.

Art. 38. The same remark applies to this article.

Art. 44. The word "who" occurring immediately after the word "offender," which in this connexion clearly refers to non-commissioned officers and soldiers only, will lead to the construction that these classes of offenders only are liable to discretionary punishment and to dismissal, leaving commissioned officers to be punished

punished by an award of compensation only. All cavil may be easily avoided by transposing the clauses of the Article. I would suggest that it run thus:—

"Shall be liable to be dismissed the service, or to be punished according to the sentence of a general or other court martial, in manner hereinafter mentioned; and shall further be sentenced to make compensation for the injury, loss, or damage sustained; and such loss, injury, or damage shall, in the case of any non-commissioned officer or soldier, be made good by monthly stoppages, not exceeding half the pay and allowances of the offender."

Art. 45. I would suggest that the words "be sentenced to" be inserted between "shall" and "forfeit," in the commencement of this article, that there may be no doubt as to the authority which is to order the forfeiture.

Art. 47. It strikes me that the words "in manner hereinafter mentioned", have been omitted at the close of this article; at least, their insertion would be an improvement.

Art. 56. I think this article as it stands sufficient for all purposes. The Governor-in-council at Madras appears not to recognise the difficulty suggested by the Commander-in-chief regarding detachments in the Straits.

Art. 58. I do not consider it necessary, but I think it would be an improvement if an insertion were made in this article, regarding the relative rank of native commissioned officers of the higher grades. The rule to which attention was lately called by the Commander of the Forces would derive force were it confirmed, as here proposed, by the authority of these articles. As Judge Advocates are European officers, the insertion of the word "European" before officers appears desirable.

Art. 66. There is no provision in this article for examinations *de bene esse* of witnesses at distant places, whose attendance cannot be obtained, and whose depositions cannot be taken in presence of the prisoner. I would suggest an addition to this effect, as most important and indispensably required.

Art. 71. Instead of "and of all additional pay while serving," I think it would be better to write the word "or," and then to add, "or both these forfeitures." The court may then exercise their discretion in awarding either or both, according to the act committed.

It appears to me necessary to insert in this article a provision to the effect that all offenders sentenced to such imprisonment as renders them incapable of re-admission into the ranks be struck off the strength of the army from the date of confirmation of sentence. I make this suggestion with reference to the point which has before arisen and created discussion, whether soldiers sentenced to imprisonment, with hard labour in irons on the roads, were to be retained in the service, or struck off at once. I would accordingly propose to insert immediately after the word "Provided," these words, "that every soldier sentenced to imprisonment, with hard labour in irons on the roads, shall be struck off the strength of his corps from the date of confirmation of such sentence; and that no soldier," &c. &c.

Art. 79. The first sentence of this article appears to me to impose an unnecessary and very unpleasant task on the Commander-in-chief, of declaring on every occasion of capital sentence the mode in which it shall be carried into execution. I conceive it would be a great improvement to leave it to the court to declare the mode of execution; and for that purpose, that such mode be introduced into this article. I would propose accordingly to alter the commencement of the article thus: "In every sentence of death awarded by a general court martial, the court shall specify that the offender shall suffer death by being hanged by the neck until he be dead, or 'by being shot to death from the mouth of a cannon,' as the court in their discretion shall think expedient; and such sentence, if confirmed, shall be carried into effect accordingly*."

II.—In

* I have omitted the punishment of shooting to death by musketry, because the Hindoo soldiery entertain a very strong objection to carrying such a sentence into execution, pleading that their religious principles are opposed to it. A very striking instance of this feeling occurred a few months ago at Saugor, in the 11th regiment of Native Infantry. I consider it, therefore, unwise to sanction a description of punishment calculated, as this is, to lead to insubordination; the more especially as shooting to death from the mouth of a cannon is, in my opinion, a much more impressive, and consequently a preferable mode of military execution, to that which is usually resorted to in European armies.

No. II.—Part 2.
Articles of War.

II.—In the preceding observations I have remarked or made such suggestions as occurred to me on the articles as they now stand. But on an attentive consideration of the whole code, it appears to me that it is capable of modification, with much advantage, in the way I am about to explain. I annex an abstract of the crimes and punishments in the articles of war as they now stand, by reference to which my observations will be greatly assisted.

Dismissal.

If the suggested addition of dismissal be adopted in Articles 31 to 36 inclusive, and Article 38, (the desirableness of which I have already taken occasion to express,) it will be seen that this punishment is awardable at discretion for the offences stated in Articles from 5 to 18 inclusive, 20 to 22, 31 to 44; besides that, under Articles 19 and 48, the dismissal of the offender is made peremptory; and though dismissal is not expressly laid down for the offences under Articles 23 to 30, 46, 47, yet, as they are made liable to imprisonment with hard labour, which involves dismissal, it follows that for every crime in the code as it stands, except Article 50, dismissal is either actually awardable or involved as a consequence of other punishment.

Discretionary Punishment.

Then with regard to discretionary punishments, under Articles 70, 71. It appears that, with exception of Articles from 5 to 18, which are capital crimes, and Article 50, discretionary punishment is awardable for the whole of the offences contained in the code.

Comparison of Crimes.

Thirdly, with regard to the comparative heinousness of offences. It appears to me that some little changes are desirable in this respect, in order to render offences of similar criminality liable to the same punishments. The crime of quitting a post in time of peace (Article 28), is one of the most serious a man can be guilty of; yet it is excepted from dismissal, and is subjected to discretionary punishment. Hitherto this crime has been severely punished, and very deservedly so, for it will at once be admitted that upon the vigilance of sentries everything depends. In the articles for the European troops this offence is liable to capital punishment at all times, though it is certainly not customary to pass such a sentence upon it in time of peace. I would distinguish between sentries and others.

With regard to "all crimes not capital" (Article 46), there is no article which so frequently comes into operation as this, and the class of offences it contemplates is of very many shades of criminality, from the slightest misbehaviour to the highest insubordination and moral heinousness, short of mutiny on the one hand and disgraceful conduct on the other; and yet it is not possible to sentence the offender to dismissal under this article. This appears to me a defect which it is of much importance to remedy.

Again, with regard to the minor offences in Articles 23 to 30, and Article 47 and 77, direct sentence of dismissal is not awardable; but there is something of contradiction in making these offences liable to imprisonment with labour, which carries dismissal with it.

Upon these several considerations, I would beg to be permitted to propose that the changes I have touched upon should be admitted into these articles; and I believe that the mode in which I would propose to effect this will be found both to improve the code, and to shorten it by avoiding the present repetition of clauses referring to punishments.

Section II. "Of Crimes and Punishments," contains at present four divisions or classes of offence: 1st, crimes punishable with death, transportation, imprisonment or dismissal, comprising the Articles from 5 to 18; 2d, crimes not punishable with death or transportation, comprising the Articles from 19 to 38; 3d, crimes punishable with loss of pay in addition to other punishments, comprising the Articles from 39 to 45; (then follows Article 46, which belongs to no particular class); 4th, crimes incident to courts martial, comprising the Articles from 47 to 50.

These several divisions or classifications of crimes I would propose to retain, adding a fifth and sixth class. But I would transpose some of the articles comprised in these classes. Article 19, I would place under the third class, in the heading of which the word "Fine" might be introduced. Article 28, in one construction

construction of it, I would place in the second class. Article 46, I would make punishable with dismissal, and place it as the proposed fifth class. And the articles from 23 to 30, and 45, I would make to form the fourth class, taking away hard labour as a punishment of the offences under them. But the accompanying schedule of proposed classification will best show what my arrangement would be.

In order to render my meaning still more clearly intelligible, as well as to enable an immediate comparison to be made, I have drawn out a copy of the articles in the order and wording above suggested, and exhibiting such alterations as I would propose, from the second section inclusive.

III. I come now to the two important questions of flogging, and the liability of Christians to these articles of war.

Upon the first point, whether the punishment of flogging shall be restored in the native armies of India by its introduction into these articles, I am decidedly of opinion that there is no occasion for the measure, and that it would, moreover, be found hurtful to the interests of the service were it adopted. I do not consider myself called upon on this occasion to advert to the legality of the Order issued by government in February 1835. It is sufficient that that order did abolish corporal punishment from the date of its promulgation, and that it has been, and is at this moment, implicitly obeyed throughout the three presidencies; and that we have the experience of more than four years, during which the effects of its abolition may be observed.

It must be allowed that simple dismissal from the service was an ineffectual punishment as substituted for flogging by the Government Order in question; and the consequence has been, in some cases, a relaxation of the salutary force of example, by having recourse to minor courts martial to punish desertion and mutinous conduct, under the designation of absence without leave, and insubordination; or an assumption by courts martial of an enlarged jurisdiction quite unauthorised by military law or the Regulations of government. The object of the first of these two procedures was, to obtain the dismissal of the delinquent in the manner least troublesome, minor courts martial having the power to dismiss an offender for absence without leave, or insubordination, just as a general court martial would have dismissed him if charged with desertion, or mutinous conduct; and as the desired result was thus early obtainable, the impropriety of merging great offences under inferior titles, and thus of resorting to inferior tribunals to punish crimes properly cognizable by general court martial only, was allowed to give way to the convenience of dealing with the offender without the formality, the trouble, and the delay of a general court martial. The object of the second procedure was to overawe the evil-disposed by the exhibition of a severe punishment of a new description, "hard labour in irons on the roads," for the graver military crimes.

Now this last-mentioned punishment is already sanctioned and made awardable in these articles of war; and I look upon it not only as an excellent substitute for corporal punishment, but as in itself quite sufficient to work its way as an example, and to make it needless to restore the punishment of flogging. Judging from the information I have received of the excellent effect produced by the passing of a sentence of hard labour in irons on the roads on a sepoy of the Bengal native troops in the army of the Indus, and of the promulgation of that sentence throughout the corps of that army, I am convinced that the same course of proceeding, invariably made known to the native troops by a deliberate and impressive explanation to them of the General Order promulgating the trial, would have the best possible effect. Of the good already resulting from the infliction of hard labour for the more serious military offences, which has been much resorted to during the past year, even though its infliction was not authorised by previous usage or by regulation, I have not the slightest doubt. The punishment has of course taken the culprits entirely by surprise, but awarded as it has been by their own native officers, and adding so severely as it does to the dismissal from the ranks, which it always carries with it, it cannot but have operated, wherever it became known, as a powerful check to that libertine spirit which the abolition of flogging, without substituting for it anything more than mere dismissal, was at first and for some time observed to produce and encourage.

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No. II.—Part 2.
Articles of War.

If, however, there be any force in this representation, arising out of the fortuitous adoption of a new course of procedure prompted by the necessity of circumstances, how greatly will its strength, as an argument against the re-introduction of corporal punishment, be augmented, when it is considered that it is owing, as I sincerely believe it is, to the abolition of flogging, that the native army has of late been recruited in the superior manner it has been. My opinion on this subject is formed from information derived from the best sources; and I could here beg to suggest, if the government think it necessary, that it be referred to the Adjutant-general of the army to state, whether it be not the fact, that in completing the recent augmentations, we have enlisted generally a superior class of men, and more Mahomedan recruits of this description; and that our recruiting has been effected with greater facility than was the case before the punishment of flogging was abolished. Although there may be other causes of these remarkable facts, yet my own mind is satisfied that the cause to which I attribute them, is a principal one; and the consideration of the advantage we derive from it powerfully induces me to deprecate the restitution of the punishment of flogging.

It will be observed that in these observations I have wholly abstained from touching upon the probable effects on the minds of the native soldiery of the restoration of the lash; I have not thought it worth while to speculate on possibilities either way, because I am very strongly of opinion, that there is enough both in the good effects on our recruiting of the abolition of flogging, and the good effects on discipline of hard labour on the roads as a military punishment, to show, that even supposing the re-introduction of corporal punishment to be most innocent as regards the feelings of the soldiery, such a measure is not only not required for the due maintenance of discipline, but would also be injurious to the service.

Regarding the second great subject of consideration, the liability of Christians to these articles of war, I am of opinion that the article on that subject in the proposed code is very good as far as it goes; but it appears to me to require an additional provision as indispensable to its complete efficiency. Persons of European descent, and professing Christianity, are made liable to the Mutiny Act and articles of war for the Company's European service, and thereby are subjected to corporal punishment. If there exists any force in the objection so frequently made, that the articles of war for the European and native troops operate inconveniently at stations where both are cantoned, from the circumstance of the former being subject to corporal punishment, and the latter not being so subject, the objection will apply with much greater force to an enactment which renders two classes of the same corps, two descriptions of men of the very same service, so differently punishable. Since the promulgation of the Government Order abolishing corporal punishment, repeated reference has been made on the subject of the drummers and other Christians comprised in a native regiment, and government have invariably replied, that all such individuals are included in the exemption from flogging. I beg to propose, that in conformity with these decisions, and in order to obviate the objection I have pointed out, a clause be added to the article relating to Christians, providing that they shall nevertheless be exempted from corporal punishment by flogging, and that they shall instead thereof be liable to imprisonment, with or without hard labour, in irons on the roads, together with solitary confinement for one month at a time, or three months in one year during such imprisonment, in the same manner and for the same crimes as persons amenable to these articles of war are themselves liable.

Calcutta, 10 April 1839. (signed) *W. Casement*, M. G.

ABSTRACT of CRIMES and PUNISHMENTS in the ARTICLES of WAR, as they now stand.

PUNISHMENTS.	CRIMES.	ARTICLES	REMARKS.
Death. Transportation for life, or any term of years. Imprisonment, with or without hard labour, for life, or any term of years; together with solitary confinement for one month at a time, and not more than three months in a year, of such imprisonment. Dismissal.	Mutiny or sedition	5	
	Striking a superior officer	6	
	Desertion	7	
	Sleeping on or quitting post in time of war.	8	
	Doing violence to persons bringing provisions in time of war.	9	
	Treacherously making known the watchword.	10	
	False alarms in time of war	11	
	Holding correspondence with, or giving intelligence to, an enemy.	12	
	Relieving or harbouring an enemy	13	
	Going in search of plunder	14	
	Casting away arms in presence of an enemy.	15	
	Misbehaving before an enemy	16	
	Abandoning a post	17	
	Treacherously suffering an enemy to escape.	18	
If an officer (Art. 70): Suspension from rank and pay and allowances for a stated period. To be placed lower in the list of his rank, by an alteration of the date of his commission, thereby losing the corresponding benefit of length of service.	Selling stores, &c. the property of government.	19	-- It is provided in Art. 19, that the offender shall be dismissed the service, and fined to the extent of the loss or damage; and be liable further to imprisonment, with or without hard labour, for a term which may extend to three years, together with solitary confinement for any portions of such term, not exceeding one month at a time, or three months in one year; or discretionary punishment, under Articles 70, 71, as stated in the opposite column.
	Persuading to desert	20	-- The offender under these Articles is made liable to dismissal, or to the discretionary punishments stated in the opposite column.
	Not joining from leave when corps is going on service.	21	
	Taking bribe for procuring leave, promotion, or other advantage.	22	
	False alarms in time of peace	23	
	Absent two miles from camp without leave.	24	
If a non-commissioned officer or soldier (Art. 71): Reduction to the ranks. To be placed lower in the list of his rank, with proportionate loss of service. Imprisonment for not exceeding four months. Imprisonment, with hard labour, not exceeding two months; and solitary confinement during imprisonment, one month at a time, and three months in a year. And in addition, forfeiture of pension on discharge, and of additional pay while serving.	Absent from cantonment or camp after tattoo without leave.	25	
	Not repairing to parade in time	26	
	Quitting company or troop without leave or necessity.	27	
	Quitting guard or post in time of peace without being relieved.	28	
	Releasing prisoner without order, or suffering his escape.	29	
	Not seeing reparation done to ill-treated persons.	30	
	Entertaining deserters	31	The offender under these articles, if a commissioned officer, is made liable to dismissal, or the discretionary punishments stated in the opposite column.
	Drunkenness on duty	32	
	Violence to sentry	33	
	False returns	34	
	False certificates for pension or allowance.	35	
	Disgraceful conduct of commissioned officers.	36	
	Officer breaking arrest	37	-- The offender is made liable to dismissal, as well as discretionary punishment.
	Malingering	38	-- The offender, if a commissioned officer, is made liable to dismissal, or discretionary punishment.
	Stealing from comrades	39	-- The offender is made liable to dismissal, or discretionary punishment. The stolen property is to be restored; or if not found, the offender, if sentenced to dismissal, is to be further fined to the extent of the loss; or in other cases, he is to undergo monthly stoppages, not exceeding half his pay and allowances.

(*continued*)

PUNISHMENTS.	CRIMES.	ARTICLES	REMARKS.
Under Articles 70 and 71, as stated in the preceding page.	Committing waste or spoil - -	40	The offender is made liable to dismissal, or the discretionary punishments; and is further to make compensation in the cases of non-commissioned officers or soldiers, to be recovered by monthly stoppages.
	Officers extorting money or services.	41	
	Non-commissioned officers or soldiers extorting money, &c.	42	
	Non-commissioned officers or soldiers selling or wasting ammunition.	43	
	Non-commissioned officers or soldiers spoiling horse, arms, &c.	44	
	Absence without leave - -	45	- - The offender is to forfeit his pay and allowances for the period of his absence.
	All crimes not capital - -	46	The offender, if an officer, is peremptorily to be dismissed the service, and be further subject to fine to the amount of his arrears of pay and allowances, or to imprisonment, which may extend to three years. Not discretionary punishments. If a non-commissioned officer or soldier, the offender is to be dismissed, and is further liable to discretionary punishment.
	Not obeying summons, or refusing to give evidence.	47	
	False evidence - - - -	48	
Imprisonment not exceeding three months. Discretionary punishments under Articles 70 and 71.	- - Menacing words, gestures, &c. before a court martial.	50	- - According to the offender's condition, and the nature of his offence.
	Frivolous complaints - - -	77	

SCHEDULE of PROPOSED ALTERATIONS in the ARTICLES of WAR.

PUNISHMENTS.	CRIMES.	Proposed Number of Articles.	Present Number of Articles.	REMARKS.
1st CLASS:	Crimes punishable with Death, Transportation, Imprisonment, or Dismissal:			
Death. Transportation for life, or any term of years. Imprisonment, with or without hard labour, for life, or any term of years; together with solitary confinement for one month at a time, and not more than three months in a year of such imprisonment. Dismissal.	Mutiny or sedition - - -	5	5	
	Striking a superior - - -	6	6	
	Desertion - - - -	7	7	
	Sleeping on post, or quitting it in time of war.	8	8	
	Doing violence to persons bringing provisions in time of war.	9	9	
	Treacherously making known the watchword.	10	10	
	False alarms in time of war - -	11	11	
	Holding correspondence with, or giving intelligence to, an enemy.	12	12	
	Relieving or harbouring an enemy	13	13	
	Going in search of plunder -	14	14	
	Casting away arms, &c. in presence of an enemy.	15	15	
	Misbehaving before an enemy -	16	16	
	Abandoning a post - - -	17	17	
	Treacherously suffering an enemy to escape.	18	18	
2d CLASS:	Crimes not punishable with Death or Transportation:			
Imprisonment, with or without hard labour, for life or any term of years, together with solitary confinement for one month at a time, and not more than three months in a year of such imprisonment, by general court martial. Dismissal. Imprisonment of both kinds. Forfeiture of pension on discharge, or of additional pay while serving, or both, by any court martial.	Quitting or sleeping on post in time of peace.	19	28	- - It will be observed that this is not precisely Art. 28; the word "guard" is left out, and the words "sleeping on" are added. The crime here contemplated is that of a sentry only.

PUNISHMENTS.	CRIMES.	Proposed Number of Articles.	Present Number of Articles.	REMARKS.
2d CLASS—*continued.*	Crimes not punishable with Death or Transportation—*continued.*			
Dismissal. If an officer: Suspension from rank and pay and allowances for a stated period. Degradation, with corresponding loss of service. If a non-commissioned officer or soldier: Reduction to the ranks. Degradation, with corresponding loss of service. Imprisonment for four months. Imprisonment, with hard labour, for two months, together with solitary confinement. Besides forfeiture of pension on discharge, or of additional pay while serving, or both.	Persuading to desert - - -	20	20	
	Not joining from leave when corps is going on service.	21	21	
	Taking bribes for procuring leave, promotion, or other advantage.	22	22	
	Entertaining deserters - -	23	31	
	Drunkenness on duty - -	24	32	
	Violence to sentry - - -	25	33	
	False returns - - - -	26	34	
	False certificates for pension or allowance.	27	35	
	Disgraceful conduct of commissioned officers.	28	36	
	Officers' breach of arrest - -	29	37	
	Malingering - - - - -	30	38	
3d CLASS:	Crimes punishable with Fine or Loss of Pay, in addition to other Punishments:			
Peremptory dismissal, and fine to the extent of the loss or damage; and further liable to imprisonment, with or without hard labour, for a term which may extend to three years, together with solitary confinement for any portions of such term, not exceeding one month at a time, or three months in one year.	Selling stores, &c. the property of government.	31	19	
Dismissal. Reduction to the ranks. Degradation, with loss of service. Imprisonment, four months. Imprisonment, with labour, two months, and solitary confinement. Besides forfeiture of pension, or of additional pay, or both.	Stealing from comrades, &c. -	32	39	The stolen property to be restored; or, if not found, the offender, if sentenced to dismissal, is to be further fined to the extent of the loss; if not dismissed, to undergo monthly stoppages, not exceeding half his pay and allowances.
Dismissal, &c. as above - -	Committing waste or spoil - -	33	40	The offender to make compensation. If a non-commissioned officer or soldier, compensation to be made by monthly stoppages.
	Extortion by officers - - -	34	41	
	Extortion by non-commissioned officers and soldiers.	35	42	
	Selling or wasting ammunition -	36	43	
	Spoiling horse, arms, &c. - -	37	44	
4th CLASS:	Crimes not punishable with Dismissal, or Hard Labour in Irons on the Roads:			
If an officer: Suspension. Degradation, with loss of service. If a non-commissioned officer or soldier: Reduction. Degradation, with loss of service. Imprisonment for four months or less. Forfeiture of pension on discharge, or of additional pay while serving, or both.	False alarms in time of peace -	38	23	
	Absent two miles from camp without leave.	39	24	
	Absent from cantonment or camp without leave after tattoo.	40	25	
	Not repairing to parade in time -	41	26	
	Quitting company or troop without leave or necessity.	42	27	
	Quitting guard or post without leave or relieved.	43	28	-- This is part of the Article, "without leave" being added, and "post" being retained, with reference to the proposed Article 19, in preceding page.
	Releasing prisoner without order, or suffering his escape.	44	29	
	Not seeing reparation done to ill-treated persons.	45	30	
	Absence without leave - -	46	45	-- The offender to forfeit his pay and allowance for the period of absence.

(*continued*)

PUNISHMENTS.	CRIMES.	Proposed Number of Articles.	Present Number of Articles.	REMARKS.
5th CLASS:	Miscellaneous:			
According to the nature of the offence, with any of the punishments previously specified, except death and transportation.	All crimes not capital - -	47	46	
6th CLASS:	Crimes incident to Courts Martial:			
Dismissal. If an officer: Suspension. Degradation, with loss of service. If a non-commissioned officer or soldier: Reduction. Degradation, with loss of service. Imprisonment for four months or less, and solitary confinement. Forfeiture of pension or additional pay, or both.	Not obeying summons, or refusing to give evidence.	48	47	
Peremptory dismissal, and fine to the amount of arrears, or imprisonment for three years.	False evidence - - - -	49	48	
Imprisonment, not exceeding three months. If an officer: Suspension. Degradation (as above). If a non-commissioned officer or soldier: Reduction. Degradation (as above). Imprisonment, four months. Forfeiture of pension, or additional pay, or both.	Menacing, &c. before a court martial.	51	50	- - According to the offender's condition, and the nature of his offence.
	Frivolous complaints - - -	- -	77	

Legis. Cons.
20 May 1839.
No. 22.

SECOND NOTE by Major-general *Casement.*

Note.—In my observations on the proposed articles of war, in a note dated the 10th instant, I made some suggestions regarding the Articles 18, 67, 79, in connexion with other modifications which had occurred to me as improvements. It has been suggested as desirable, that the consideration of these articles, as well as of the two important questions of flogging and Christian amenability, should be separated from the more general remarks upon the articles. I proceed accordingly to submit, as desired, my own opinion on the points alluded to in this separate form.

I.—Art. 18, *Hard Labour.*—It had appeared to me advisable to propose that the words "in irons on the roads" should be inserted after "hard labour," wherever that punishment occurs in this and other articles; I am however informed by Mr. Amos that obstacles exist to the use of the additional words, inasmuch as they would interfere with the instructions lately issued by government to the magistrates, the object of which is to do away with gang labour on the roads altogether. The reasons assigned for not admitting the words "in irons on the roads" are sufficiently strong, but I cannot avoid expressing my regret that it should have been found expedient to divest hard labour of the publicity and the disgrace, which would have had, if my opinion be a correct one, their due influence in impressing the native soldiery with a dread of being sentenced to undergo it. My principal reason for regret arises from the doubt which I entertain whether the punishment of hard labour within the precincts of a gaol will answer the purpose of an efficient substitute for corporal punishment.

II.—Art. 67,

II.—Art. 67, *Bene esse Examination.*—I had remarked regarding this article that it had omitted to provide for the examination of a distant witness when the prisoner could not be present on the occasion, and I proposed the introduction of the words, "whenever that (*i. e.* the presence of the prisoner) is practicable." But it appears that these words are liable to the construction that they authorise the reception of *ex parte* depositions, not subjected to the test of cross-examination by the opposite party. I had certainly not intended to propose so great an innovation on the rules of evidence. If the proposed additional words be taken to sanction the reception of depositions obtained *ex parte* to the detriment of a prisoner (which is the construction suggested by Mr. Amos upon them), equally may they be said to authorise the admission of *ex parte* depositions favourable to the prisoner. To condemn or to acquit upon this species of testimony would be alike inconsistent with justice; but I did not contemplate either of these. It appeared to me (and I think so still) that the article, by not alluding to cases where a prisoner could not be present at the examination, virtually excluded all such cases, which were likely to be by far the most numerous of those in which the depositions of absent witnesses could be required. In attempting to propose a remedy, I felt a good deal of difficulty, because it did not readily occur to me how to meet all supposable cases; and in suggesting the words in question, I conceived that it would occur to those who had to act upon this provision of the article to resort to the long-established legal mode of taking the examinations; and as regards Bengal, to the instructions laid down in the Judge Advocate-general's circular letter, dated 22d November 1830, copy of which I enclose. I had at one time resolved to leave the draft of this part of the article to those better versed in technical forms than I can pretend to be, and probably it would have been better to do so. But having ventured upon the suggestion of the additional words, perhaps I may be permitted now to propose that a further insertion be made, so that the clause may run thus: "His written deposition may be used, provided it shall have been taken in the presence of the prisoner, whenever that is practicable, and in all cases with the knowledge, and subject to the cross-examination of the parties to the trial, and before a magistrate or the commanding officer of the station." I purposely omit the word "consent" as relating to parties, presuming that consent is of no consequence; for if the party likely to be affected by the examination might get rid of it by withholding his consent, justice might often be thereby defeated: but after all, I submit this suggestion with deference to such correction as it may be thought capable of receiving.

III.—Art. 79, *Execution.*—The first sentence of this article appears to me to impose an unnecessary and very unpleasant task on the Commander-in-chief, of declaring on every occasion of capital sentence the mode in which it shall be carried into execution. I conceive it would be a great improvement to leave it to the court to declare the mode of execution, and for that purpose that such mode be introduced into this article; I would propose accordingly to alter the commencement of the article thus: "In every sentence of death awarded by a general court martial, the court shall specify that the offender shall suffer death by being hanged by the neck until he be dead; or 'by being shot to death from the mouth of a cannon,' as the court in their discretion shall think expedient, and such sentence, if confirmed, shall be carried into effect accordingly." I have omitted the punishment of shooting to death by musketry, because the Hindoo soldiery entertain a very strong objection to carrying such a sentence into execution, pleading that their religious principles are opposed to it. A very striking instance of this feeling occurred a few months ago at Saugor, in the 11th regiment of native infantry. I consider it therefore unwise to sanction a description of punishment calculated, as this is, to lead to insubordination; the more especially as shooting to death from the mouth of a cannon is, in my opinion, a much more impressive, and consequently a preferable mode of military execution, to hat which is usually resorted to in European armies.

IV.—*Corporal Punishment.*—Upon the point whether the punishment of flogging shall be resorted to in the native armies of India, by its introduction into these articles, I am decidedly of opinion that there is no occasion for the measure, and that it would, moreover, be found hurtful to the interests of the service were it adopted. I do not consider myself called upon on this occasion to advert to the legality of the Order issued by government in February 1835. It is sufficient that that Order did abolish corporal punishment from the date of its promul-

gation, and that it has been, and is at this moment, implicitly obeyed throughout the three presidencies; and that we have the experience of more than four years, during which the effects of its abolition may be observed.

It must be allowed that simple dismissal from the service was an ineffectual punishment as substituted for flogging by the Government Order in question; and the consequence has been in some cases, a relaxation of the salutary force of example, by having recourse to minor courts martial to punish desertion and mutinous conduct, under the designation of absence without leave and insubordination; or an assumption by courts martial of an enlarged jurisdiction, quite unauthorised by military law or the Regulations of government. The object of the first of these two procedures was, to obtain the dismissal of the delinquent in the manner least troublesome; minor courts martial having the power to dismiss an offender for absence without leave or insubordination, just as a general court martial would have dismissed him if charged with desertion or mutinous conduct, and as the desired result was thus easily obtainable, the impropriety of merging great offences under inferior titles, and thus of resorting to inferior tribunals to punish crimes properly cognizable by general court martial only, was allowed to give way to the convenience of dealing with the offender without the formality, the trouble, and the delay, of a general court martial. The object of the second procedure was to overawe the evil-disposed by the exhibition of a severe punishment of a new description, hard labour in irons on the roads, for the graver military crimes.

Now this last-mentioned punishment is already sanctioned, and made awardable in these articles of war, and I look upon it, not only as an excellent substitute for corporal punishment, but is in itself quite sufficient to work its way as an example, and to make it needless to restore the punishment of flogging. Judging from the information I have received of the excellent effect produced by the passing of a sentence of hard labour in irons on the roads on a sepoy of the Bengal native troops in the army of the Indus, and of the promulgation of the sentence throughout the corps of that army, I am convinced that the same course of proceeding invariably made known to the native troops by a deliberate and impressive explanation to them of the General Order promulgating the trial, would have the best possible effect. Of the good already resulting from the infliction of hard labour for the more serious military offences, which has been much resorted to during the past year, even though its infliction was not authorised by previous usage or by regulation, I have not the slightest doubt. The punishment has of course taken the culprits entirely by surprise, but awarded as it has been by their own native officers, and adding so severely as it does to dismissal from the ranks, which it always carries with it, it cannot but have operated wherever it became known as a powerful check to that libertine spirit which the abolition of flogging, without substituting for it anything more than mere dismissal, was at first, and for some time, observed to produce and encourage.

If, however, there be any force in this representation arising out of the fortuitous adoption of a new course of procedure, prompted by the necessity of circumstances, how greatly will its strength as an argument against the re-introduction of corporal punishment be augmented, when it is considered that it is owing, as I sincerely believe it is, to the abolition of flogging that the native army has of late been recruited in the superior manner it has been. My opinion on this subject is formed from information derived from the best sources, and I would here beg to suggest, if the government think it necessary, that it be referred to the Adjutant-general of the army, to state whether it be not the fact, that in completing the recent augmentations, we have enlisted generally a superior class of men, and more Mahomedan recruits of this description, and that our recruiting has been effected with greater facility than was the case before the punishment of flogging was abolished. Although there may be other causes of these remarkable facts, yet my own mind is satisfied that the cause to which I attribute them, is a principal one; and the consideration of the advantage we derive from it, powerfully induces me to deprecate the restitution of the punishment of flogging.

It will be remarked that in these observations, I had wholly abstained from touching upon the probable effects on the minds of the native soldiery of the restoration of the lash. I had not thought it worth while to speculate on possibilities either way, because I am very strongly of opinion, that there is enough both in the good effects on our recruiting of the abolition of flogging, and the good effects on discipline of hard labour on the roads as a military punishment, to show that even supposing the re-introduction of corporal punishment to be most innocent as regards

regards the feelings of the soldiery; such a measure is not only not required for the due maintenance of discipline, but would also be injurious to the service.

My opinion, however, being desired on the probable effects of the restoration of corporal punishment, supposing it otherwise free from objection, I will state that I concur that that measure would not be attended with any dangerous consequences, as far as the feelings of the soldiery are concerned, yet if it be true that we owe our late good recruits to its abolition, they would obviously be inclined to ask for their discharge, and men of their description, especially Mahomedans, would not take service with us.

On the other hand, if hard labour be diminished in severity, it may, as I have before observed, fail as an example, and there are at present no means of substituting other punishment for flogging, whether in camp or in cantonments.

With regard to the European soldiery, I do not imagine that they would trouble themselves to institute any comparison between their own liability to corporal punishment, and the exemption therefrom of the native portion of the army, nor that there is any probability of complaint arising among them from that circumstance.

V.—*Christian Amenability.*—Regarding the second great subject of consideration, the liability of Christians to these articles of war, I am of opinion that the article on that subject in the proposed code is very good, as far as it goes, but it appears to me to require an additional provision as indispensable to its complete efficiency. Persons of European descent and professing Christianity, are made liable to the Mutiny Act and articles of war for the Company's European service, and thereby are subjected to corporal punishment. If there exists any force in the objection so frequently made, that the articles of war for the European and native troops operate inconveniently at stations where both are cantoned, from the circumstance of the former being subject to corporal punishment, and the latter not being so subject, the objection will apply with much greater force to an enactment which renders two classes of the same corps, two descriptions of men of the very same service, so differently punishable. Since the promulgation of the General Order abolishing corporal punishment, repeated reference has been made on the subject of the drummers and other Christians comprised in a native regiment, and government have invariably replied that all individuals are included in the exemption from flogging; I beg to propose that in conformity with these decisions, and in order to obviate the objection I have pointed out, a clause be added to the article relating to Christians, providing that they shall nevertheless be exempted from corporal punishment by flogging, and that they shall instead thereof be liable to imprisonment, with or without hard labour in irons on the roads, together with solitary confinement for one month at a time, or three months in one year, during such imprisonment, in the same manner, and for the same crimes as persons amenable to these articles of war are themselves liable.

Since writing the above, some communications with which I have been favoured by Mr. Amos, have shown me so much difficulty in introducing the provision I have suggested with reference to the restrictions of the Charter Act, that it appears to me necessary to withdraw my proposal; I conceive, however, that the desired object of exempting the Christians from corporal punishment may be effected by a circular from the Commander-in-chief, directing that corporal punishment shall not be sentenced by any court martial, European or native, held in the native army, until the receipt of further instructions. Such a circular would not be of force enough to be considered an infringement of the Acts of Parliament, while yet it would have sufficient force for the purpose contemplated.

(signed) *W. Casement,*
Major-general.

Calcutta, 16 April 1839.

No. II.—Part 2.
Articles of War.

(Circular.)

(No. 2482.)

From *J. Bryant*, Esq. Judge Advocate-general, to the Deputy Judge Advocate-general.

Sir,

I AM directed by the Commander-in-chief to transmit for your attention and guidance, the subjoined orders of government regarding witnesses summoned before a court martial.

Judge Advocate-general's Office,
Head-quarters, on the River,
22 November 1830.

I have, &c.
(signed) *J. Bryant*,
Judge Advocate-general.

Orders of Government.

1. AT all courts martial, when the list of witnesses given by the party to be tried, embraces individuals whose attendance, from being employed on important public duties, or being at a distance, or from any other impediment it is difficult to obtain, it shall be the duty of the Judge Advocate to inquire into the nature of the evidence so required.

2. In cases where the defendant refuses to disclose the nature of his proposed examination of a witness whose attendance cannot be obtained without great inconvenience to the individual, the expense of procuring such attendance must attach to defendant, but on satisfying the government after trial that the personal attendance of such witness was essentially necessary to his cause, government will take into consideration the reimbursement of the expenses.

3. When the witness is situated as above described, and the defendant discloses the nature of the evidence required, the Judge Advocate shall propose to the party for trial an examination *de bene esse*, that is, interrogatories by the parties transmitted to, and the answers taken before a justice of the peace.

4. In the event of difficulties as above described existing to the detention of a witness, the Judge Advocate shall propose the evidence required being taken in presence of both parties before a magistrate, and it is understood that the necessity of the above cases being established, and the court martial being satisfied that the consent of both parties had been obtained, such evidence may be legally received on the trial.

(signed) *J. Bryant*,
Judge Advocate-general.

Legis. Cons.
20 May 1839.
No. 23.

MINUTE by the Honourable *A. Amos*, Esq., dated the 18th April 1839.

I HAVE had several communications with General Casement upon the subject of the articles of war. The General has minutely attended to all the points, including those suggested by the Madras military authorities, and I have adopted various improvements which the General has pointed out.

From what I know of the sentiments of the members of Council in regard to the principles and details of the measure, I conceive that they will not find any matters requiring their particular attention, excepting the following five, discussed in their order in General Casement's second note:—

1. Hard Labour on the Roads in Irons.
2. *De bene esse* Depositions.
3. Execution of the Sentence of Death.
4. Flogging.
5. Christian Amenability.

1. *Hard Labour on the Roads in Irons.*—General Casement proposes to add the words "on the roads in irons" wherever the words "hard labour" occur.

I object, firstly, because "hard labour" will include "hard labour in irons on the roads" wherever that species of punishment is permitted by the general criminal law of the country. The Acts all use the terms "hard labour" only. The sentences, *e. g.* by the Supreme Court are all passed in those terms. If the same object

object can be obtained by the use of words sounding less rigorous, I think it is desirable, especially as the matter may be canvassed by the English public, to whom it will appear (rightly according to the terms, but wrongly in fact) that soldiers are subjected to a severer species of hard labour than persons not military convicted of the worst crimes. It sounds, moreover, severe to make the irons a part of the punishment instead of merely using them, when necessary, to prevent escape. Secondly, "hard labour in irons on the roads" would not in legal effect be a punishment equally extensive with "hard labour;" it might be held not to extend to hard labour in prison.

Lastly, with reference to the Prison Discipline Report, and our resolutions thereon, and the orders respecting gang-labour now under discussion, it does not seem advisable to enact in terms the punishment of labour "in irons on the roads," where the whole effect of such terms can be attained by using the expression "hard labour," which runs through our whole criminal law.

2. *De bene esse Depositions.*—The clause relating to them is not to be found in any other articles of war; it was suggested by Mr. Robertson, from a part in the Duke of Wellington's despatches. No doubt, in a great many cases, the witness's presence cannot be procured; but I think that, in a new clause especially, it would not be expedient to sanction the admission of any evidence against a prisoner which has not been taken in his presence; any such evidence must be open to serious objections, as being contrary to the first principles of the English law of evidence, and in practice it might often lead to the admission of proofs which had not undergone the ordinary and recognised tests, even where it had been practicable to bring the prisoner and witness together, though, perhaps, at some small inconvenience or slight expense. The clause is, perhaps, chiefly applicable to any army in its march through a foreign country.

3. *Execution of Sentence of Death.*—The questions upon this article are chiefly of a military nature; it may, however, be said that it has not been usual in articles of war to enter into the particulars of the execution of sentence of death, and that we are unnecessarily provoking inquiry upon an exciting subject; but, on the whole, I am disposed to adopt General Casement's amendment.

4. *Flogging.*—I have only to refer to General Casement's remarks, having no new information or suggestion to offer.

5. *Christian Amenability.*—I think it will be best to coincide with General Casement's view, upon his reconsideration of his first remarks.

Christians of European birth or descent, if not already subject to 4 Geo. 4, c. 81, may, I conceive, be made so by these articles, provided they be not British subjects born in Europe, or their children; but if any of them are subject to 4 Geo. 4, c. 81, we are prohibited from varying their liability under that Act by our articles.

Vainly, in regard to courts of request, have the military authorities, on repeated occasions, beseeched government to declare who were subject to 4 Geo. 4, c. 81; and the Bengal Regulations, in attempting to define, have rendered this subject more obscure.

British subjects born in Europe, or their children, would, I conceive, be liable to the 4 Geo. 4, c. 81, and therefore we could not except them from corporal punishment; and we should have great difficulty in defining, upon the face of our articles, and greater difficulties might occur in practice, if we were to attempt to mark out the "Christians of European birth or descent" whom we were at liberty to exempt from corporal punishment. The least objectionable expression would be "natives of European descent, being Christian;" but there are various objections even to this expression.

An order, as suggested by General Casement, would seem judicious, as it would appear to be inexpedient that in a regiment composed of Hindoos, Musselmen, and Christians, the Christians alone should be subject to flogging, and that even a person of European descent might get exempted from flogging, if he renounced Christianity. The article, in its present terms, embraces persons already liable to 4 Geo. 4, c. 81; as to them it is merely declaratory; as to the other persons included, perhaps there is no distinction between them and natives not of European descent, or between them and persons who are not Christians, more important than that they are subject to flogging; nevertheless, I think the article cannot be altered without falling into greater difficulties.

(signed) *A. Amos.*

Legis. Cons.
20 May 1839.
No. 24.

MINUTE by the Honourable *T. C. Robertson*, Esq., dated the 4th May 1839.

General Sir *W. Casement*'s Notes upon the Articles of War.

I THINK that General Casement attaches more importance than is necessary to the insertion of the words "hard labour on the roads" in the sentence. Such labour, under such circumstances, is in our courts always understood to be comprised in the words "mushuyut" or "mihuntshadeed," one or other of which terms would, I conclude, be used by the members of a native court martial to express their meaning.

On the subject of military execution I entirely agree with General Casement.

Beside the objections stated by him to imposing upon the Commander-in-chief the painful task of determining by what mode of death a criminal shall die, it strikes me as unwise to leave it in the power of any individual to constrain Hindoos to discharge what, under some circumstances, as, for instance, when the culprit is a Bramin, must be to them a more than merely revolting duty.

On the subject of corporal punishment, I can only hope that the opinion expressed by General Casement may be confirmed by a majority of the few to whom, in my Minute of the 7th January, I have suggested that reference may be made. How necessary it is that such a reference should precede our final decision may be seen from that passage in General Casement's note, in which a "libertine spirit" is stated to have been at first "produced and encouraged by the abolition of flogging," to which it is rather inferred than insisted that the recent substitution of "labour on the roads and irons" has operated as a "powerful check."

With regard to what is called Christian amenability, we may at least provide that no sentence of corporal punishment shall be carried into effect, for so long as the rest of the force is exempted, upon individuals of the class to which this question applies.

I regret extremely to find that the reception in evidence of written depositions may not, even in the case supposed, that of an army in actual movement, in the opinion of Mr. Amos and General Casement, be permitted.

(signed) *T. C. Robertson.*

Legis. Cons.
20 May 1839.
No. 25.

MINUTE by the Honourable *W. W. Bird*, Esq., dated the 16th May 1839.

1. THE only point on which I consider it necessary to make any further observation has reference to corporal punishment.

2. Major-general Sir William Casement, than whom there are few, if any, in the Bengal army better qualified to form a correct judgment, declares himself to be decidedly of opinion that there is no occasion to revert to the measure, and that, if adopted, it would be found prejudicial to the interests of the service. He admits, however, that simple dismissal from the service was an ineffectual punishment for flogging, and that the consequence has been, in some cases, a relaxation of the salutary force of example, by having recourse to minor courts martial for the punishment of desertion and mutinous conduct, under the designation of absence without leave and insubordination, or an assumption by courts martial of an enlarged jurisdiction, quite unauthorized by military law or the regulations of government; but he thinks that the punishment of "hard labour in irons on the roads," proposed to be made available by the new articles of war, would be an effectual substitute, it having been already attended with the best effect in a case wherein it was resorted to by the Army of the Indus; and he has no doubt that, adding so severely as it does to the punishment of dismissal from the ranks, which it always carries with it, it must operate, whenever resorted to, as a powerful check to that libertine spirit which the abolition of flogging, without substituting for it anything more than mere dismissal, was at first and for some time observed to produce and encourage.

3. I am no advocate, as already stated in my former Minute, for the infliction of corporal punishment, and if the punishment of hard labour in irons on the roads should be found, on experience, a sufficient substitute, I will most cordially join in its abolition; but time, I think, should be allowed to admit of this fact being satisfactorily ascertained, especially as Sir William Casement states that, if it fails,

there

there exist at present no means of substituting other punishment for flogging, either in camp or in cantonments.

4. The Major-general further states it to be his sincere belief, founded on information obtained from the best sources, that it is owing to the abolition of flogging that in completing the recent augmentations the native army was recruited with so much facility, and that there have been enlisted generally a more superior class of men, especially Mahomedans, than was ever done before. If this be the case, and it should, I think, be inquired into, it will of course be a strong additional reason for the discontinuance of the punishment in question.

On the other points under consideration, I agree generally with Mr. Amos.

(signed) *W. W. Bird.*

AMENDED DRAFT of Articles of War, dated the 20th May 1839.

Legis. Cons. 20 May 1839. No. 26.

ARTICLES of War for the Government of the Native Officers and Soldiers in the Military Service of the Honourable the East India Company, and for the Administration of Justice by Courts Martial.

SECTION I.

Of Enlisting and Discharges.

Art. 1. Every recruit, prior to being enrolled in his regiment, shall have the articles of war read and explained to him; after which a declaration shall be made to him by the officer commanding, in front of the regiment or corps, in presence of the native officers and soldiers, and an oath shall then be required from him, according to the forms of his religion, in front of the colours, such declaration and oath to be the like as are now used in the respective presidencies.

Articles of war and declaration to be read, and oath to be administered to all recruits.

Art. 2. No commissioned officers shall be dismissed, excepting by the sentence of a general court martial. No non-commissioned officers shall be discharged, except by the sentence of a court martial. Soldiers may be discharged the service by order of the officer commanding in chief at the presidency to which they may belong, or by sentence of a court martial. Every such dismissal or discharge shall include forfeiture of all claim to pension; provided that no sentence of discharge awarded by a court martial inferior to general shall be carried into effect without the concurrence of the general or other officer commanding the division, district, or field-force with which the prisoner may be serving; provided also, that the Governor-general in Council, in his executive capacity, and the Governor in Council of any presidency to which a commissioned or non-commissioned officer or soldier may belong, shall have power to order his dismissal or discharge.

Commissioned officers, non-commissioned officers, and soldiers, by what authority to be dismissed the service.

Art 3. All non-commissioned officers and soldiers discharged the service shall be furnished by the commanding officer of the regiment with a discharge certificate, made out in the vernacular language of the individual discharged, with an English translation, expressing the authority for or cause of such discharge, and the period of their entire service in the army.

Non-commissioned officers and soldiers to be furnished with a discharge certificate.

Art. 4. No non-commissioned officer or soldier shall enlist himself in any other regiment without a regular discharge from his former regiment, under the penalty of being reputed a deserter and suffering accordingly.

Penalty of enlisting in other regiments, &c. without a discharge from former regiment.

SECTION II.

Crimes and Punishments:

Crimes punishable with Death, Transportation, Imprisonment, or Dismissal.

Art. 5. Any officer, non-commissioned officer, or soldier, who shall begin, excite, cause, or join in any mutiny or sedition in the regiment or corps to which he belongs, or in any other corps or regiment in the service, or serving as allies, on any pretence whatever; or who, being present at any mutiny or sedition, shall not use his utmost endeavours to suppress it; or who, coming to the knowledge of any mutiny, intended mutiny, or concealed combination against the state, who shall not without delay give information thereof to his commanding officer; or,

Penalty of mutiny.

Penalty of striking or drawing any weapon against a superior officer, &c.

Art. 6. Who shall strike his superior officer, or shall draw or offer to draw, or lift up any weapon, or use or offer any violence against him, or shall disobey any lawful command of his superior officer; or,

Penalty of desertion.

Art. 7. Who shall be guilty of desertion; or,

Penalty of sleeping on his post, or of quitting it before he is relieved, in time of war or alarm.

Art. 8. Who, in time of war or alarm, shall sleep upon his post, or shall leave it before regularly relieved; or,

Penalty of doing violence to any person who brings provisions to the camp or quarters, in time of war or alarm.

Art. 9. Who, in time of war or alarm, shall do violence to any person bringing provisions or other necessaries to the cantonment or camp of the troops employed; or shall force a safeguard; or,

Penalty of making known the watchword.

Art. 10. Who shall treacherously make known the watchword to any person not entitled to receive it according to the rules and discipline of war; or,

Penalty of making false alarms in camp or quarters.

Art. 11. Who, in time of war, shall by discharging of fire-arms, drawing of swords, beating drums, making signals, using swords, or by any means whatsoever, intentionally occasion false alarms in action, camp, garrison, or quarters; or,

Penalty of holding correspondence with, or giving intelligence to the enemy.

Art. 12. Who shall be convicted of holding correspondence with or giving intelligence to the enemy, or any person in rebellion, either directly or indirectly, or coming to the knowledge of such correspondence shall not discover it immediately to the commanding officer; or,

Penalty of relieving or harbouring an enemy.

Art. 13. Who shall directly or indirectly assist or relieve the enemy, or persons in rebellion, with money, victuals, or ammunition, or shall knowingly harbour or protect an enemy or rebel; or,

Penalty of going in search of plunder.

Art. 14. Who shall leave his commanding officer, or his post or company, in time of action, or go in search of plunder; or,

Penalty of casting away arms or ammunition.

Art. 15. Who shall in presence of an enemy cast away his arms or ammunition; or,

Penalty of misbehaving before the enemy.

Art. 16. Who shall misbehave himself before the enemy, or use means to induce others so to misbehave; or,

Penalty of shamefully abandoning, &c. to the enemy, any garrison, fortress, &c.

Art. 17. Who shall shamefully abandon, or deliver up to the enemy any garrison, fortress, post, or guard committed to his charge, or which it was his duty to defend, or who shall use means to induce any other officer, non-commissioned officer, or soldier, so to abandon or deliver up any such garrison, fortress, post, or guard; or,

Penalty of treacherously suffering an enemy to escape.

Art. 18. Who shall treacherously release, wilfully aid, or connive at the escape of any enemy or rebel placed as a prisoner under his charge, shall suffer death or transportation for life or any term of years, or imprisonment with or without hard labour for life, or any term of years, together with solitary confinement for any portion or portions of the term of imprisonment, not exceeding one month at a time, or three months in the space of one year, or be dismissed the service, as a general court martial shall award.

Crimes not punishable with Death or Transportation.

Penalty of sleeping on his post, or of quitting it before he is relieved, in time of peace.

Art. 19. Any sentry who in time of peace shall sleep upon his post, or shall leave it before regularly relieved, shall be liable to suffer imprisonment, with or without hard labour, for life, or for any term of years, together with solitary confinement for any portion or portions of the term of imprisonment, not exceeding one month at a time, or three months in the space of one year, as a general court martial shall award; or be punished by the sentence of a general or other court martial, in manner hereinafter mentioned.

Penalty of persuading any one to desert.

Art. 20. Any officer, non-commissioned officer, or soldier who shall be convicted of having advised or persuaded any other officer, non-commissioned officer, or soldier to desert, or having connived at such desertion; or,

Art. 21.

Art. 21. Who being on leave of absence shall have received information from the head-quarters of his regiment, or from other competent authority, that his regiment has been ordered on service, and shall not rejoin without delay; or, — Penalty of not joining from leave without delay when corps is ordered on service.

Art. 22. Who directly or indirectly shall require or accept a bribe, present, or gratification on the pretence of procuring leave of absence, promotion, or any other advantage or indulgence for any officer, non-commissioned officer, or soldier; or, — Penalty of taking a bribe for procuring leave, &c.

Art. 23. Who shall knowingly enlist a deserter, or shall not, after his being discovered, immediately cause him to be confined, and give notice thereof to the nearest commissioned officer; or, — Penalty for entertaining and not confining deserters.

Art. 24. Who shall be drunk on duty; or, — Penalty of drunkenness on duty.

Art. 25. Who shall strike or do violence to a sentry; or, — Penalty of striking or doing violence to a sentry.

Art. 26. Who shall knowingly make a false return or report to any of his superior officers authorized to call for a return or report of the state of the men under his command, or of arms, ammunition, clothing, or other stores thereunto belonging, or of which he may otherwise have charge; or, — Penalty of false returns or reports.

Art. 27. Who shall obtain or attempt to obtain for himself, or any officer or soldier, or any other person whatsoever, any pension or allowance, by any false statement, certificate, or document, or by the omission of the true statement; or, — Penalty of false certificates, &c. to obtain pension, &c.

Art. 28. Who shall be guilty of feigning, or producing disease or infirmity; or, — Penalty of malingering, &c.

Art. 29. Who, being an officer, shall behave in a manner unbecoming the character of an officer, the fact or facts whereon the charge is grounded being clearly specified; or, — Penalty of disgraceful conduct of commissioned officers.

Art. 30. Who, being an officer under arrest, shall leave his confinement before he is set at liberty by competent authority, shall be punished by the sentence of a general or other court martial in manner hereinafter mentioned. — Penalty of breach of arrest.

Crimes Punishable with Fine or loss of Pay, in addition to other Punishments.

Art. 31. Any officer, non-commissioned officer, or soldier, who shall embezzle or fraudulently misapply any money entrusted to him on the public account, or for any military purpose, or any provisions, forage, arms, clothing, ammunition, or military stores of whatever kind or description, the property of government, entrusted to his charge; or who shall be concerned in, or connive at, any such embezzlement, or fraudulent misapplication, shall on conviction thereof before a general court martial, be dismissed the service, and fined to the extent of the loss or damage, and be further liable to suffer imprisonment, with or without hard labour, for a term which may extend to three years, together with solitary confinement for any portion or portions of such term, not exceeding one month at a time, or three months in the space of one year. — Penalty of selling stores, &c. the property of government.

Art. 32. Any non-commissioned officer or soldier who shall steal money or goods, the property of a comrade or of a military officer, or other person serving with or attached to the army, or shall commit any petty offence of a fraudulent nature, to the injury of or with intent to injure any person, civil or military, shall be punished according to the sentence of a general or other court martial in manner hereinafter mentioned, and the property stolen or fraudulently obtained shall be restored to the owner; or, if the property cannot be found, the offender shall, if dismissed the service, be further fined to the extent of the loss or damage. In all other cases the loss or damage shall be made good by monthly stoppage, not exceeding half the pay and allowances of the offender. — Penalty of stealing from a comrade, &c.

Art. 33. Any officer, non-commissioned officer, or soldier, who shall, without orders, commit waste or plunder, either in towns or villages, gardens or fields, or shall injure or destroy the property, or shall do violence on the person of any of the inhabitants; or, — Penalty of committing any waste or spoil in towns, villages, gardens, &c.

Penalty of extorting money, &c. as fees, duties, or on any pretence whatsoever.

Art. 34. Any officer commanding at any post, or on the march, who shall, on any pretence whatever, illegally, and against the will of the parties, extort money or other property, or services; or,

Penalty of a non-commissioned officer or soldier extorting money, &c. as fees, on any pretence whatsoever.

Art. 35. Any non-commissioned officer or soldier at any post, or on the march, who shall extort money or property of any description as fees or duties, or on any pretence whatever; or shall without authority exact from villagers or others, carriage, porterage, or provisions; or,

Penalty of selling or wasting ammunition delivered out.

Art. 36. Who shall sell, lose, or designedly, or through neglect, waste the ammunition delivered out to him; or,

Penalty of spoiling, &c. horse, arms, &c.

Art. 37. Who shall sell, or designedly or through neglect lose or injure his horse, or spoil his arms, clothes, accoutrements, or regimental necessaries, or any of the above articles entrusted or belonging to any other non-commissioned officer or soldier, shall be punished by the sentence of a general or other court martial in manner hereinafter mentioned, and shall further be sentenced by the court to make compensation for the injury, loss, or damage sustained; and such loss, injury, or damage shall in the case of any non-commissioned officer or soldier be made good by monthly stoppages, not exceeding half the pay and allowances of the offender.

Crimes not Punishable with Dismissal, or Imprisonment, with Labour.

Penalty of occasioning false alarms in time of peace.

Art. 38. Any officer, non-commissioned officer, or soldier, who in time of peace shall, by discharging fire-arms, drawing swords, beating drums, or by any other means whatever, intentionally occasion false alarms in camp, garrison, or quarters; or,

Penalty of being two miles from camp without leave.

Art. 39. Who shall be found two miles from the camp without leave; or,

Penalty of absence after hours out of camp or quarters.

Art 40. Who shall be absent from his cantonment after tattoo, or from camp after retreat beating, without leave from his superior officer; or,

Penalty of not repairing at the time fixed to the parade, &c.

Art. 41. Who shall fail to repair at the time fixed to the parade or place appointed, if not prevented by sickness or some other sufficient cause; or,

Penalty of quitting company or troop without leave.

Art. 42. Who shall without urgent necessity, or without leave of his superior officer, quit his company or troop; or,

Penalty of quitting guard or post without being relieved, &c.

Art. 43. Who shall quit his guard or post in time of peace, without being regularly dismissed or relieved, or without leave; or,

Penalty of releasing a prisoner without orders, or suffering him to escape.

Art. 44. Who being in command of a guard, shall refuse to receive any prisoner duly committed to his charge, or shall without proper authority release any prisoner, or shall suffer through carelessness or neglect any prisoner to escape; or,

Penalty of not seeing reparation done to persons ill-treated, &c.

Art. 45. Who being in command at any post, or on the march, on complaint made to him of any person under his command beating, or otherwise ill-treating any person, or extorting from him more than he is obliged to furnish by authority, or disturbing fairs or markets, or committing any kind of riot, shall not see reparation done to the party or parties injured, or if that be impracticable, shall not report the same to his superior officer; or,

Penalty of being absent without leave, and of overstaying the period of leave.

Art. 46. Who shall absent himself without leave, or shall without sufficient cause overstay the period for which leave may have been granted him, shall be punished by the sentence of a general or other court martial in manner hereinafter mentioned; provided that such offender shall not be liable to be sentenced to be dismissed the service, nor to suffer imprisonment with hard labour; and that such offender being convicted of absence without leave, or of overstaying his leave, shall further be sentenced by the court to forfeit his pay and allowances for the time he may have been so irregularly absent.

Miscellaneous Crimes.

Art. 47. All crimes not capital, and all disorders or neglects which officers, non-commissioned officers, or soldiers may be guilty of to the prejudice of good order and military discipline, though not specified in these Articles, are to be taken cognizance of by courts martial, and to be punished according to the sentence of a general or other court martial, in manner hereinafter mentioned.

Crimes incident to Courts Martial.

Penalty of not attending when summoned as a witness before a court martial, or of refusing to be sworn.

Art. 48. Any person amenable to these articles of war, who, when duly summoned before a court martial shall not attend, or shall refuse to be sworn, or to give evidence upon solemn affirmation or declaration, as hereinafter is mentioned, shall be punished according to the sentence of the same or another general or inferior court martial, in manner hereinafter mentioned; provided that such offender shall not be liable to be sentenced to suffer imprisonment with hard labour.

Penalty of perjury.

Art. 49. Any officer, non-commissioned officer, or soldier who shall be found guilty of wilfully and knowingly giving false evidence on oath, or solemn affirmation or declaration, on any trial before any general or other court martial, or any military court entitled to administer an oath, shall be dismissed the service, and be further subject, according to the sentence of a general court martial, to fine, to the amount of his arrears of pay and allowances, or to imprisonment, which may extend to three years.

How punished for not attending, or for perjury.

Art. 50. Any person not amenable to these articles of war, having been summoned upon any court martial, and refusing and neglecting to attend, or who attending shall give such testimony as, if given in a civil court, would render him guilty of perjury, shall be liable to trial in a civil court, and on conviction, shall suffer such penalties as may be in force against a prisoner offending in like manner in any civil court.

Penalty of using menacing words, gestures, &c. before a court martial.

Art. 51. Any person using menacing words, signs, or gestures in the presence of a court martial then sitting, or causing any disorder or riot so as to disturb their proceedings, shall be punished according to the condition of the offender, and the nature and degree of his offence, by the sentence of the same or another court martial, with imprisonment not exceeding three months, or of a civil court in like manner as if the same offence had been committed before such court.

Section III.

Administration of Justice.

Courts martial, by whom convened; sentences confirmed or mitigated.

Art. 52. The Commander-in-chief or commanding officer of the forces for the time being at the presidency to which the prisoner to be tried may belong, and officers commanding divisions, districts, field forces, or independent garrisons under such presidency, are respectively empowered to convene courts martial for the trial and punishment of all offences specified in these articles. The sentences of every such court martial shall be subject to the confirmation of the Commander-in-chief, or commanding officer of the forces aforesaid, who shall have power to mitigate or remit the punishments awarded, according to discretion.

Sentence of death may be commuted to transportation, &c.

Art. 53. In cases wherein sentence of death has been awarded by a court martial, the Commander-in-chief, or the officer commanding the forces for the time being at the presidency to which the prisoner may belong, may, instead of causing such sentence to be carried into effect, order the offender to be transported for life, or a certain term of years, or to be imprisoned with or without hard labour for life, or a certain term of years, and with or without such solitary confinement as aforesaid, as to the said officer commanding in chief may seem meet.

General courts martial, how constituted; not ordinarily to consist of less than 13 commissioned officers; when may consist of seven.

Art. 54. A general court martial shall not consist of less than 13 commissioned officers, unless it be held out of the Honourable Company's territories, where a general court martial may consist of seven commissioned officers, if a greater number cannot, in the judgment of the convening officer, be conveniently assembled.

No sentence to be put in execution until confirmed.

Art. 55. No sentence of a general court martial shall be put in execution until after a report shall have been made of the whole proceedings to the Commander-in-chief or commanding officer of the forces for the time being at the presidency to which the prisoner may belong, and until he shall have confirmed the same, and have signified his directions thereon, except in places out of the British territories, where the sentence shall be confirmed as hereinafter directed.

Courts martial, not being general, by whom appointed.

Sentence to be confirmed by the commanding officer previous to execution.

Art. 56. The commanding officer of every station, cantonment, garrison, detachment, or regiment, may assemble courts martial, not being general courts martial, according to the nature of his command, for the trial and punishment of all offences specified in these articles, where general courts martial have not exclusive jurisdiction. No sentence awarded by such court martial shall be carried into effect until the commanding officer as aforesaid shall have confirmed it; provided that no sentence awarded by such courts martial against any native medical officer shall be carried into effect until it shall have been confirmed by the Commander-in-chief or commanding officer of the forces for the time being at the presidency in which the court is assembled.

No officer commanding less than four companies to confirm the sentence of a court martial.

Art. 57. No officer or detached command of less than four troops or companies, or detachments numerically equal to four companies, shall carry into execution any punishment awarded by a court martial, held by his order, until the sentence shall have been confirmed by the officer commanding the regiment to which the offender belongs, except when an immediate example is necessary.

Courts martial not general, how constituted; not to consist of less than five officers ordinarily.

Art. 58. Courts martial not being general, shall not consist of less than five commissioned officers, excepting where that number cannot conveniently be assembled, when three shall be sufficient, of whom the senior officer shall be president.

Senior officer to preside at general courts martial.

Judge Advocate.

Art. 59. At all general courts martial the senior officer shall sit as president without being so appointed by warrant: provided that all subadar majors are to take precedence according to the dates of their commissions, and above all native officers holding the rank of subadar or jummadar, and that surdar bahadoors shall rank only according to their respective commissions of subadar major, subadar, or jemadar; and a Judge Advocate, or an European officer of not less than 10 years' service, shall be appointed to conduct the proceedings.

At all inferior courts martial an European officer to superintend.

Art. 60. At all courts martial inferior to general, an European officer, of not less than seven years' standing in the service, except in cases where no officer of that standing may be available, or the adjutant of the regiment, shall be appointed to conduct the proceedings.

Interpreter to be appointed.

Art. 61. An interpreter, if practicable, shall be appointed to all courts martial.

Revision of finding or sentence.

Art. 62. No sentence or finding of a court martial shall be revised more than once. For the purpose of such revision, the president and all the members shall be convened. But if the president or other members should be unavoidably absent, the remaining members may be convened, provided they are not fewer than the smallest legal number: when all the same members do not meet, the circumstances are to be duly certified on the face of the proceedings.

Forms of Proceeding.

Hours of sitting.

Art. 63. Trials by courts martial may be carried on between the hours of six in the morning and four in the afternoon, and not otherwise, except in cases which may require an immediate example.

Oath to be taken by the interpreter.

Art. 64. On the assembly of the court, the Judge Advocate or superintendending European officer, shall administer to the interpreter the following oath:—

Oath.

"I, *A. B.* swear that I will faithfully interpret and translate the proceedings of the court, and that I will not divulge the sentence until it shall have been approved or published, and further, that I will not disclose or discover the vote

or

or opinion of any particular member of the court, unless required to give evidence thereof by a court of justice or court martial, in due course of law.

"So help me God."

Oath by members of the court.

In case of the unavoidable absence of an interpreter, the European superintending officer of a court martial inferior to general, shall take the oath prescribed for the interpreter. The Judge Advocate or superintending officer shall then cause the following declaration to be made by each member on oath, according to the forms of his religion:—

"I, *A. B.* do swear that I will duly administer justice according to the articles of war, without partiality, favour, or affection; and if any doubt shall arise, then according to my conscience, the best of my understanding, and the custom of war in the like cases, and that I will not divulge the sentence of the court until it shall be approved of or published; and further, that I will not disclose or discover the vote or opinion of any particular member of the court, unless required to give evidence thereof by a court of justice or a court martial, in due course of law."

The following oath shall then be administered by the interpreter to the Judge Advocate or superintending officer:—

Oath to be taken by Judge Advocate and superintending officer.

"I, *A. B.* do swear that I will not disclose or discover the vote or opinion of any particular member of the court martial, unless required to give evidence thereof by a court of justice, or a court martial, in due course of law.

"So help me God."

Provided, that it shall be necessary to re-administer these oaths on the commencement of fresh trials before the same court.

Summoning and Examination of Witnesses.

Persons not amenable to military authority how summoned.

Art. 65. In all cases where persons required as witnesses before a court martial may not be amenable to these articles, the Judge Advocate or commanding officer shall transmit to the magistrate within whose jurisdiction the witness may reside, his summons for the attendance of such person, and the magistrate shall cause the witness to be duly summoned.

Witness to be examined on oath or solemn declaration.

Art. 66. All persons who give evidence at a court martial are to be examined on oath, according to the forms of their respective religions; or if they shall object on the ground of any religious scruple to take an oath, they may, at the discretion of the court, be permitted to make their solemn affirmation or declaration in such manner as is hereinafter mentioned.

Hindoos exempted from taking an oath, to subscribe a declaration.

Art. 67. In the case of a witness of the Hindoo persuasion being exempted from taking an oath, the following declaration shall be subscribed by him previously to his deposition:—

Declaration.

"I will faithfully answer according to the truth such questions as may be put to me by the court, in the cause now before the court. I will not declare anything not warranted by the truth; if I declare anything not warranted by the truth, I shall be deserving of punishment from Almighty God."

Mussulmans exempted from taking an oath, to subscribe a declaration.

And in the case of a Mussulman witness so exempted, the following declaration shall be subscribed by him previously to his deposition:—

Declaration.

"I sincerely promise and solemnly declare, in the presence of Almighty God, that I will faithfully and without partiality answer, according to the truth, any questions that may be put to me by the court, respecting the cause now before the court."

After the witness, whether Hindoo or Mussulman, has given his deposition, he is to subscribe the following declaration:—

Declaration.

"I solemnly declare, in the presence of Almighty God, that I have faithfully, and without partiality, answered according to the truth, the questions put to me by the court, respecting the cause now before the court."

In cases in which a witness is dead, or his attendance cannot be obtained without great inconvenience, his written deposition may be used, provided it shall have been taken in the presence of the prisoner, and before a magistrate or the officer commanding the station.

Manner of Voting.

Members in voting, to begin with the youngest, &c.

Art. 68. All the members of a court martial are to preserve order, and in giving their votes upon all matters are to begin with the youngest; and in all cases where a sentence of death may not be awarded, the decision shall be by the majority of members present, provided the number of members present be not less than that required by the preceding articles; but in case of an equality of votes, the decision shall be in favour of the prisoner. The president at a court martial shall vote with the other members, but shall have no casting vote; provided that in cases of an equality of votes upon other questions than the finding and the sentence, the president shall have a casting vote.

Equality of votes.

Casting vote.

Concurrence of two-thirds of the members in a sentence of death.

Art. 69. No sentence of death shall be given against any offender by a court martial, unless two-thirds of the members present concur therein, or four where the court consists of five members, or five where the court consists of seven.

Peculiar Jurisdiction of General Courts Martial.

Commissioned officers amenable to general courts martial only, offences of which the punishment may be death or imprisonment exceeding four months.

Art. 70. All commissioned officers, all prisoners charged with offences which are punishable with death or with transportation, or with imprisonment exceeding four months, shall be tried by general courts martial only.

Dismissal, suspension, and reduction.

Art. 71. A general court martial, when a commissioned officer shall be convicted before it of any offence before specified, of which the punishment is not before defined, or is left discretionary, may adjudge such officer to be dismissed the service, or to be suspended from rank and pay and allowances for a stated period, or to be placed lower on the list of his rank, by an alteration of the date of his commission, thereby losing the corresponding benefit of length of service, and the court shall in every such sentence specify the extent or degree of suspension or reduction which they shall so adjudge.

General Powers of Punishment vested in all Courts Martial.

Non-commissioned officer punished with loss of rank, dismissal, &c.

Art. 72. Any court martial, when a non-commissioned officer or soldier shall be convicted before it of any offence before specified, of which the punishment is not before defined or is left discretionary, may adjudge such non-commissioned officer to be reduced to serve as a private soldier, or may adjudge a non-commissioned officer or soldier to be dismissed the service, or to be placed lower in the list of the rank which he holds, with proportionate loss in respect to length of service, such loss to be distinctly specified in the sentence, or may adjudge such non-commissioned officer, first reducing him to the ranks, or such soldier, to be imprisoned for any period not exceeding four months, or to be imprisoned, with hard labour, for any period not exceeding two months, and may direct the prisoner to be kept in solitary confinement for any portion or portions of his term of imprisonment, not exceeding one month at a time; and in addition to any such punishments may adjudge a forfeiture of all claim to pension on discharge, which might otherwise have accrued to such non-commissioned officer or soldier from the length or nature of his service, or of all additional pay while serving, or both these forfeitures.

Provided that every soldier sentenced to imprisonment with hard labour shall be struck off the strength of his corps from the date of confirmation of such sentence, and that no soldier who has undergone such punishment under the sentence of any court martial shall be capable of being re-admitted into the ranks or receiving pension on discharge; provided also, that all cases of sentences, including forfeiture of additional pay while serving, shall be reported to and confirmed by the Commander-in-chief or commanding officer of the forces, before they are carried into effect, and that all forfeitures of any prospective advantage shall be restorable by the same authority.

No person to be tried second time for same offence; previous convictions.

Art. 73. No person being acquitted or convicted before a court martial of any offence, shall be liable to be tried a second time by the same or any other court martial for the same offence; provided always, that after a prisoner shall be found guilty by a court martial of any offence, such court martial may receive evidence of any previous conviction before a court martial, for the purpose of affixing the punishment to which the prisoner is liable to be sentenced for the offence of which he has been so found guilty.

Art. 74. No person shall be liable to be tried or punished for any offence against these articles, which shall appear to have been committed more than three years previous to the order directing the assembly of the court martial whereby he is to be tried, unless the person accused, by reason of his absenting himself, or some other manifest impediment, shall not have been amenable to justice within that period, in which case such person shall be liable to be tried at any time not exceeding two years after the impediment shall have ceased. Limitation of liability to trial.

Art. 75. No non-commissioned officer shall be reduced to the ranks but by the sentence of a court martial. Non-commissioned officers, how to be reduced.

Punishments otherwise than by Courts Martial.

Art. 76. In cases of light offences, a commanding officer may, without the intervention of a court martial, award extra drill for a period not exceeding 15 days, extra duty, not exceeding two reliefs, restriction to barrack limits, not exceeding 15 days, or confinement in the quarter guard, defaulter's room, or solitary cell, not exceeding seven days removal from staff situations or acting appointments; and none of these descriptions of punishment shall be awardable by sentence of a court martial. Jurisdiction of commanding officer without a court martial. Court martial precluded from awarding such sentences.

Complaints.

Art. 77. Any officer, non-commissioned officer, or soldier, thinking himself wronged by his superior or other officer, is to complain thereof to the commanding officer of his troop or company, by whom, if the grievance be not redressed, such officer, non-commissioned officer, or soldier, may complain to the commanding officer of his regiment, who is hereby required to examine into such complaint, or remit it to his superior authority, as the circumstances may require; but if the complaint should appear to be frivolous or groundless, the party preferring it shall be liable to be punished according to the sentence of a general or other court martial, in manner hereinbefore mentioned; provided that such offender shall not be liable to be sentenced to dismissal, nor to suffer imprisonment with hard labour. An officer, non-commissioned officer, or soldier, considering himself wronged by his superior, may complain to his commanding officer.

Arrest and Confinement preparatory to Trial.

Art. 78. Any officer, non-commissioned officer, or soldier, being charged with the commission of a crime deserving punishment, his commanding officer, if he is of opinion that there are reasonable grounds for inquiry, shall order him to be put under arrest, if an officer; or if a soldier, to be confined until he shall be either tried by a court martial or shall be lawfully discharged by a proper authority, and a court martial for the trial shall be assembled within eight days; or if it cannot be conveniently assembled within that time, then as soon as it can be conveniently assembled. Officers, non-commissioned officers, and soldiers, may be placed in arrest, or confined, preparatory to trial.

Execution of Sentences by Courts Martial.

Art. 79. In every sentence of death awarded by a general court martial, the court shall specify that the offender shall "suffer death by being hanged by the neck until he be dead," or "by being shot to death from the mouth of a cannon," as the court in their discretion shall deem expedient; and such sentence, if confirmed, shall be carried into effect accordingly. Whenever the sentence of a general court martial shall adjudge transportation, or sentence of death shall be commuted by competent authority to transportation, the Nizamut and Foujdaree Adawlut shall give effect to such sentence, or commuted sentence, on the sentence being certified to the court by the Adjutant-general or his deputy, under the authority of the Commander-in-chief or commanding officer of the forces at the presidency to which the prisoner may belong. Sentence of death. *Nizamut and Foojdaree Adawlut to give effect to sentences of transportation.*

Art. 80. Persons sentenced to imprisonment by courts martial shall be imprisoned in any public prison, or in any other fit place which the Commander-in-chief or other officer confirming the sentence shall direct. Imprisonment.

Art. 81. Whenever any sentence of a court martial shall adjudge imprisonment, or imprisonment with labour, or with solitary confinement, or both, it shall be the duty of every magistrate to give force to such sentences, on the offender being delivered into his custody, and on being furnished with a copy of the sentence by the officer commanding the division or district within which the trial is held. Magistrates to give effect to sentences of imprisonment by military authority.

When a fine is adjudged by a court-martial, the pay or property, &c. of the offender within camp, &c. shall be available.

Art. 82. In every case wherein a fine of pecuniary compensation shall be adjudged by a court martial, any arrears of pay or public money due to the offender, or any property belonging to him in camp, garrison, or cantonment, shall be available under an order from the officer commanding at such camp, garrison, or cantonment, for the payment of the amount so adjudged.

Section IV.

Effects of the Dead.

Effects of deceased commissioned officers, non-commissioned officers, soldiers, and public servants.

Art. 83. When any commissioned officer, non-commissioned officer, or soldier, or any person receiving public pay, drawn by any officer in charge of a public department belonging to the army, may die or be killed in the service, the commanding officer of the regiment or party, or officer in charge of the department, shall, if no heir or executor be present, secure his effects, and direct an inventory thereof to be taken, a duplicate of which is to be lodged in the office of the adjutant or officer in charge of the department.

Rules to be observed in the disposal of the effects of the deceased, if no heir or executor be on the spot.

Art. 84. If there be no heir or executor on the spot, the effects are to be publicly sold; the commanding officer of the regiment or party, or officer in charge of the department, after discharging the debts of the deceased, viz. the expense of funeral ceremonies, his debts in camp or quarters, and regimental debts of every description, shall account for the residue to the heir or heirs declared by will, whether written or verbal, or in failure of such to the legal representative of the deceased. And in the event of no executor, heir, or other representative of the deceased attending and establishing his claim within 12 months from the date of the casualty, the amount in the hands of the officer having charge of the estate is to be remitted to the general treasury, at the presidency.

Section V.

Articles relating to Service out of the British Territories, Martial Law, Rebels' Pay during Imprisonment by the Enemy, Effects of Deserters.

When troops are serving where there is no British Court of Judicature, serious offences may be tried by general court martial.

Art. 85. Whenever any body of the troops shall be employed out of the British territories, any officer, soldier, or other person amenable to military law, accused of murder, robbery, or other serious offences against person or property not heretofore provided for, shall be liable to be tried by a general court martial, and punished with death, or otherwise, according to law, as provided for the adjacent British territory.

General courts martial may be assembled out of the British territories, where the troops shall be in military possession, &c. Commanding officer to confirm sentence.

Art. 86. In any place out of the British territories the officer commanding any division, detachment, or distinct party, may assemble general courts martial, which shall consist of not less than seven officers, for the trial of any person under his command accused of any of the last-mentioned offences, or of any offence against these articles; but no sentence passed by such court shall be executed until confirmed by the officer commanding the troops on service to which such division, detachment, or party shall belong.

General courts martial may be assembled for the trial of persons owing allegiance to the British Government who may be taken in arms against the said Government, &c.

Art. 87. And in all places within the Company's territories where martial law shall have been by due authority proclaimed, the officer commanding the division, detachment, or distinct party, may assemble general courts martial, which shall consist of not less than seven officers, for the trial of any person owing allegiance to the British Government, who may be taken in arms against the said Government, or who may be assisting in rebellion by maliciously attacking or injuring the persons or properties of any loyal subjects, or in any other manner; and it shall be lawful for any such court martial to adjudge any person so found guilty, to suffer death, by being hanged by the neck until dead, or to be otherwise punished, as to such court martial shall seem expedient. But no sentence shall be executed until confirmed by the said commanding officer.

And the commanding officer of every such division, detachment, or distinct party, is hereby authorized to arrest, and detain in custody, all persons engaged in such rebellion, or suspected thereof, and to cause all persons so arrested and detained to be brought to trial, and to execute the sentence of all such courts martial, whether of death or otherwise, and to do all other acts necessary for such several purposes.

Art. 88. Every court martial, as constituted in the preceding article, shall have power to try any person owing allegiance to the British Government, who shall be taken in arms against the state, or otherwise aiding and abetting the enemy; and such person so found guilty, shall be liable to the punishment of death, by being hanged by the neck until dead, or to transportation for life. But no sentence passed by such court shall be executed until confirmed by the officer commanding the troops on service to which such division, detachment, or party shall belong.

Prisoners aiding, &c. the enemy, amenable to court martial, and liable to suffer death.

Sentence not to be executed until confirmed by the officer commanding.

Art. 89. Any officer, non-commissioned officer, or soldier, who shall be taken prisoner by the enemy, shall forfeit all claim to pay and allowances during the period of his remaining a prisoner, and until he shall again return to the service; when if he can establish, before a court martial, that he was unavoidably taken prisoner in the course of service, and that he hath not served with, or assisted the enemy, and that he hath returned as soon as possible to the service, he shall be entitled to receive either the whole or such portion of his arrears of pay and allowances as the court martial shall award.

Any officer, non-commissioned officer, or soldier, made prisoners, to forfeit all claim to pay and allowances, &c.

Art. 90. The effects of deserters are to be publicly sold, and the proceeds, after payment of regimental debts, remitted by the officer commanding the corps to which the deserter belongs to the general treasury at the presidency.

Effects of deserters.

Section VI.

Application of the Articles.

Art. 91. All officers, non-commissioned officers, soldiers; all drivers or farriers, trumpeters and drummers; all hospital attendants, sub-assistant surgeons, native doctors and dressers; all artificers and labourers, sutlers, camp followers, public and private, or others attached to or serving with any part of the army, are to be governed by these articles, and subject to trials by courts martial.

Art. 92. Whenever any portion of the troops belonging to one presidency shall be serving within the limits of another presidency, such troops shall be considered as placed, during such service, under the orders and authority of the Commander-in-chief or commanding officer of the forces of the presidency within which they are serving, for all the purposes of these articles of war, in the same manner as though they belonged to such presidency; and all the provisions of these articles of war which relate to the trial and punishment of offenders belonging to the presidency within which the trial is held, are hereby declared applicable to the trial and punishment of offenders amenable to these articles of war, serving within such presidency; provided always, that it shall be lawful for the Governor-general in Council, in his executive capacity, to direct that the troops or any part thereof of any presidency, whilst serving without the limits of such presidency, shall continue under the orders and authority of the Commander-in-chief or commanding officer of the forces of the presidency to which they belong, for all purposes of these articles.

Troops belonging to one presidency serving within another.

Art. 93. Persons of European descent (whether on the side of their father or mother), professing the Christian religion, shall not be amenable to these articles, but if belonging to the descriptions mentioned in Article 91, shall be subject to the Mutiny Act, and articles of war in force for the better government of the officers and soldiers in the European service of the East India Company.

Section VII.

Promulgation of the Articles.

Art. 94. These articles are to be translated into the several languages of the different presidencies and the parts following, viz. the 2d section, together with the following articles in other sections which are marked with an asterisk, viz. 2. 4. 71, 72. 75. 77, 83, 84. are to be read once every six months at the head of every regiment, troop, or company mustered in the service, and to every recruit at the period of his enlistment.

No. II.—Part 2. Articles of War.

(No. 324.)

From *J. P. Grant*, Esq. Officiating Secretary to the Government of India, to *T. H. Maddock*, Esq. Officiating Secretary to the Government of India, with the Governor-general.

Legis. Cons. 20 May 1839. No. 27.

Sir,

Legislative Dep.

In continuation of Mr. Officiating Secretary Maddock's letter, No. 843, of the 19th November last, I am directed by the Hon. the President in Council to forward to you, to be laid before the Right hon. the Governor-general of India, for his Lordship's consideration, and such orders as may be necessary, the accompanying copies of papers as noted in the margin * and the revised draft of articles of war for the discipline of the native army.

2. The governments of Fort St. George and Bombay have now submitted the opinion of the military authorities of those presidencies on the draft of articles of war, especially with regard to the remarks made in Mr. Officiating Secretary Maddock's letter of the 19th of November last, on the rules to which soldiers, &c. professing the Christian religion should be amenable. The members of Council have severally recorded their sentiments on the subject, in various Minutes. Major-general Sir W. Casement has also, at the request of the Council, prepared two papers, which are also herewith forwarded.

3. The principal points for consideration will be seen from Mr. Amos's Minute, dated the 18th of April, and with the exception of the question of corporal punishment, the same Minute will show the manner in which the President in Council proposes to treat each point.

Mr. Robertson, 7 January 1839; President, 9 March 1839; Mr. Bird, 16 May 1839.

4. On the question of corporal punishment, I am directed to request attention to the Minutes noted in the margin, and General Casement's papers.

5. The passing of the articles of war, as the draft now stands, would be in effect the legal abolition of corporal punishment in the native army, for that punishment though it is now discontinued under a General Order, has never yet been abolished by law. The President in Council feels doubts of the expediency of taking such a decided step as the formal repeal of the laws authorising the infliction of this punishment before having before him positive information of the actual result of the experiment that, for practical purposes, may be considered to have been under trial for the last four years.

6. The President in Council does not find that any reports or opinions have ever been collected on the practical working of the General Order of the 24th of February 1835. He would therefore suggest, for the consideration of his Lordship, the expediency of calling, before finally determining this important question, upon a limited number of the leading military men at the three presidencies, including some of those actually serving with the troops, to state what have been the results of the order abolishing corporal punishment, as far as their own actual experience enables them to say; and what consequences they would anticipate from its perpetuation on the one hand, and from its rescission on the other.

I have, &c.

Fort William,
20 May 1839.

(signed) *J. P. Grant*,
Officiating Secretary to the
Government of India.

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* Minute by the Hon. A. Amos, dated the 4th January 1839.
Minute by Mr. Robertson, dated the 7th January 1839.
Letter from Secretary to Government of Fort St. George, dated the 15th January 1839, with Enclosures.
Letter from Secretary to Government of Bombay, dated the 21st January 1839, with Enclosures.
Minute by the Hon. Mr. Amos, dated the 8th February 1839.
Minute by the Hon. Mr. Bird, dated the 22d February 1839.
Minute by the President, dated the 9th March 1839.
Letter from Secretary to Government of Fort St. George, dated the 14th March 1839, with Enclosure.
First Note by Major-General Casement, dated the 10th April 1839.
Second Note by Major-General Casement, dated the 16th April 1839.
Minute by the Hon. Mr. Amos, dated the 18th April 1839.
Minute by the Hon. Mr. Robertson, dated the 4th May 1839.
Minute by the Hon. Mr. Bird, dated the 16th May 1839.
Draft of Articles of War, dated the 20th May 1839.

From *T. H. Maddock*, Esq. Officiating Secretary to the Government of India, with the Governor General, to *J. P. Grant*, Esq. Officiating Secretary to the Government of India.

Legis. Cons. 12 August 1839. No. 39.

Sir,

I AM directed to acknowledge the receipt of your two letters, of the dates and subjects noted on the margin,* and in reply, to communicate as follows:

Legislative.

2. On the subject of the articles of war for the native army, the Governor-general has recorded a Minute, containing such observations as have occurred to him with reference to the points on which Mr. Amos has invited discussion. A copy of that document is enclosed, for submission to the Hon. the President in Council.

3. On the subject of the draft of Act for the better administration of justice in military courts of request, the Governor-general has studied with much attention, and his Lordship can suggest no better method of throwing light on the many points with regard to which doubts may be entertained, or of endeavouring to reconcile the differences in law and in practice which prevail in the military courts of request at the three presidencies, than that of issuing the circular which has been approved by the Hon. the President in Council; and his Lordship would wait for the returns to that circular before entering into any observations on the many points which are open to discussion.

4. On the present occasion his Lordship has only to remark, with regard to the request of attention to the 4 Geo. 4, c. 81, that this statute is about to be repealed and re-enacted, with alterations and amendments; and that, in his opinion, a solemn declaration is to be preferred to an oath in the case of a commissariat officer exercising judicial functions, should an oath be not indispensable under the provision of section 57 of the above-mentioned statute, which directs that the members of a court of requests, being Europeans, shall be sworn on the Holy Evangelists.

5. The Governor-general, however, would not, even for the present, take leave of the subject without gratefully acknowledging the soundness of the views and the laborious attention with which the fourth member of the Council has pointed out and endeavoured to overcome the difficulties of the proposed Act.

6. The original papers received with your letter, No. 320, are herewith returned.

I have, &c.

Simlah, 4 July 1839.

(signed) *T. H. Maddock*,
Officiating Secretary to the Government of India,
with the Governor-General.

MINUTE by the Right Hon. the Governor-general.

IN this paper I will apply myself as directly and as briefly as I can to the five points most deserving of consideration, which have been enumerated by Mr. Amos in his Minute of 18th April 1839.

Legis. Cons. 12 August 1839. No. 40. Enclosure.

1. *Hard Labour on the Roads in Irons.*—I think that whilst the propriety of at all allowing this description of punishment is in doubt and under discussion, the fixing it by enactment as the soldier's sentence would not be justified. A sentence simply to "hard labour" will include "hard labour in irons on the roads," if the present system should continue, and it should be determined that such shall be the execution of the judgment. On the other hand, if any other punishment shall, in consequence of the Report of the Prison Discipline Committee, be substituted for labour on the roads, it is only likely to be more certain and severe, and to carry with it as much terror to the soldier as to other descriptions of culprits. In the meantime, it seems to be generally the opinion of the government that, though

Legislative.

* Letter, No. 324, dated 20th May 1839, with enclosure, on the subject of the enactment of articles of war for the discipline of the native army. Letter, No. 320, dated 20th May 1839, on the subject of a proposed enactment for the better administration of justice in military courts of request, in all the three presidencies of Bengal, Madras, and Bombay, with enclosures.

No. II.—Part 2.
Articles of War.

though punishment on the roads should be regulated, it ought not to be at present discontinued.

2. *De bene esse Depositions.*—I would not willingly admit on a court martial any rule of evidence which is repudiated in our ordinary courts of justice, and I think that the trial of a prisoner could not with propriety be influenced by the force of depositions not taken in his presence, except indeed a deposition by one in *articulo mortis*, or such as would be admitted in the usual administration of the law. I should not, however, object to an exception from this rule in the case which is laid down in the Madras Order of November 1830 on this subject, namely, where the attendance of a witness whose evidence is thought by the prisoner to be important to his defence cannot be obtained without great inconvenience and expense, and where, with the consent of all parties, an examination *de bene esse* is held before a justice of peace.

3. *Execution of the Sentence of Death.*—I lean to the opinion that it would be best not to specify in this law what shall be the mode of inflicting capital punishment. The shooting a soldier by the muskets of his companions is repugnant to native feeling, and the blowing him from a cannon's mouth is as repugnant to English feeling. I should think it the duty of the court to select the mode of execution which is not marked by needless inhumanity, and which is most national, and this would soon be regulated by practice. If possible, I would gladly avoid an unprofitable and painful discussion, and would not attempt to define upon the face of the law what that mode should be.

4. *Flogging.*—Corporal punishment in the native armies of India has now been for more than four years discontinued, under a general order, but it has not been abolished by law, and the articles of war, as published for general information, would, in case of their enactment, have the effect of a legal abolition. It has been doubted whether this is expedient without further information; and the recommendation is made, that statements be called for from select military authorities in the three presidencies of the results of the abolition of flogging, and for opinion upon what would be the effect either of a legal perpetuation, or a rescission of the order by which it was abolished. I think that the order in question was ill-advised, and I very much regret that it ever was issued. I have, however, an extreme dislike to the support of military discipline by the infliction of corporal punishment; but whilst I could earnestly have wished to see this description of punishment gradually disused, I see that its abrupt and complete abolition has been, and cannot but yet be, a source of difficulty and embarrassment. At the same time I think that the measure is one from which there is no return, and that it is far wiser that the attention of every officer should be directed to the best means of maintaining discipline without the infliction or the terror of corporal punishment, than that men's minds should be agitated by the contemplation of a possibility of its revival. I attach very little importance to the imperfect form in which the abolition was accomplished; as, if the question were of the revival of the punishment, it would make but little difference, after four years of suspension, whether this were done by the rescission of an order, or by the repeal of a law. Either would equally mark a complete change of purpose on the part of the government in a matter materially affecting the condition of the soldiery. I am aware that the Commander-in-chief of the presidency of Fort St. George has expressed an opinion that the abolition of corporal punishment has been productive of the worst consequences to the discipline of the native army under his charge, and that the sooner it can be restored the better; but I am satisfied that this has not been the case in the presidency of Bengal. I share most strongly in the doubts recorded by Colonel Morison as to whether the order could be safely or wisely retracted here, and as far as my observation and general report have enabled me to form a judgment, I am, with Sir William Casement, of opinion that the restoration of the punishment would, if adopted, be found (while it is in our power to provide another powerfully-deterring penalty for misconduct) to be hurtful to the best interests of the service. During the last four years from 40,000 to 50,000 recruits must have entered an army in which, by an avowed act of the government, corporal punishment had ceased to exist; and I am satisfied that no such report as that which it is proposed to call for would justify the government in rescinding this Act; I would deprecate, therefore, any further agitation of the question, and would recommend, if the Legislative Council should be decided upon not passing

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in its present form the first part of number 72 in the printed draft of articles, by which it is enacted, that no court martial shall sentence any non-commissioned officer or soldier to be flogged, that either the suggestion which has been thrown out by Mr. Amos, in his Minute of January 4th, for altogether omitting the clause in question from the Act should be adopted, or, if the member of Council should entertain a decided repugnance even to this proceeding, that then, as the only course that seems open to us, nothing more be done than that these papers be submitted to the Honourable Court, or to the Secret Committee, for their decision.

5. *Christian Amenability.*—I am always pleased, wherever it is possible, to avoid legislation upon subjects on which warm and sensitive feelings are entertained, and shall be glad if it should be found practicable to exempt Christians in the native army from corporal punishment by a circular from the Commander-in-chief. I have uniformly, however, maintained the opinion that Christians in the native army, though tried by European courts martial, were only subject to the punishment of the army to which they were attached.

Simla, 26 June 1839. (signed) *Auckland.*

(True copy.)

(signed) *T. H. Maddock,*
Officiating Secretary to the Government of India,
with the Governor-general.

MINUTE by the Honourable *T. C. Robertson*, Esq.; dated 26 July 1839.

Legis. Cons. 12 August 1839. No. 41.

I HAVE a few brief remarks to record on each of the points touched upon by his Lordship the Governor-general, in his Minute of the 26th June.

1. *Hard Labour in Irons on the Road.*—That we shall ever find any effectual substitute for this punishment I myself think most improbable; at all events, it must continue in force until penitentiaries are built, which, upon the scale contemplated, will be a work of so many years, that we may safely leave the remote period of the possible introduction of any new system of prison discipline, connected with its completion, out of our calculation in legislating upon the question before us.

Articles of War. Governor-general's Minute.

But the point to which I would draw attention is the necessity for empowering regimental courts martial to sentence, in some cases, to limited periods of imprisonment with labour. I have now got the proceedings of a court of that class before me, in which a sepoy, convicted of theft and insubordination, is sentenced to be dismissed from the service. I cannot comprehend why, if general courts may sentence to long periods, regimental courts should not be allowed to sentence to brief periods of imprisonment, with or without labour.

2. *De bene esse Depositions.*—The proposition which I ventured to submit on this head was hazarded on no light authority. I find the necessity of admitting such depositions in proof urged in the strongest terms, and with the most convincing reasoning, by the Duke of Wellington, in a letter that may be found near the beginning of the fifth volume of his recently published despatches.

One of a detachment passing through a village commits a crime, and passes on through a country where all civil power is shaken or suspended by military operations. On reaching his regiment, perhaps many hundred miles from the scene of his crime, he is for the first time called to account. The evidence of his comrades may go far to prove his guilt, but that of the sufferers by his violence or rapacity may be wanting. These may, and most probably will be, the weak, either by sex or age, who cannot traverse a disturbed country, and therefore, their written depositions being absolutely rejected, instead of being cautiously received, the offender escapes, and more outrages of course ensue. I do not think that the cause of either justice or humanity is served by such scrupulosity under such circumstances, and it is only under such circumstances that these depositions are proposed to be rendered admissible.

3. *Execution of Sentence of Death.*—I still agree with Sir William Casement, that the sentence had better be enjoined, in all cases, to be that of "hanging by

No. II.—Part 2.
Articles of War.

the neck," to prevent the risks attending the arbitrary selection of any other mode of execution.

4. *Flogging.*—I have before stated what the information is that I require upon this point, and the mode in which I propose that it should be obtained.

The objections to repairing what all admit to have been an error are not self-evident; and I know no way of attaining to a fair comprehension of the degree of weight that should attach to them but that which I have suggested. As, without that information, safe legislation seems impossible, the best course we can pursue is, as proposed by his Lordship, to refer the whole question to the authorities in England.

5. *Christian Amenability.*—I entirely concur in his Lordship's remarks upon this part of the question.

(signed) *T. C. Robertson.*

Legis. Cons.
12 August 1839.
No. 42.
On the Articles of War.

MINUTE by the Honourable *W. W. Bird*, Esq.; dated 27th July 1839.

THE proposal to submit the whole of the papers for the decision of the Honourable the Court of Directors appears to me to be judicious, as, besides the abolition of flogging, there are several points on which a difference of opinion exists; and it was even doubted by the late President of the Council whether, considering the different usages at the three presidencies, it would not be advisable to forego the advantages, whatever they might be, of a general code, and leave the discipline of the native armies respectively to be conducted, under the code belonging to each, in the mode to which they had been accustomed.

Since the subject was last under discussion, we have seen the consequences of the abolition in question exemplified by the army beyond the Indus in a mode calculated to raise much doubt of its expediency. From the general orders of his Excellency the Commander-in-chief, dated Candahar, the 3d ultimo, it appears that a sepoy attached to the envoy and minister was brought to trial before a native general court martial for insubordination, and sentenced to imprisonment with hard labour for a period of two years, to undergo which it was necessary to order him to be detained as a prisoner until an opportunity should offer of sending him under an escort to Loodhiana, where he was to be delivered to the political agent for the purpose of suffering the punishment awarded him.

Such a procedure may be left to speak for itself; however well the system may work within our own provinces, it is quite clear that beyond the frontiers, and especially in an enemy's country, it must be attended with great inconveniences.

(signed) *W. W. Bird.*

Legis. Cons.
12 August 1839.
No. 43.
Articles of War.

MINUTE by the Honourable Sir *William Casement.*

HAVING already submitted, while military secretary, to the consideration of Government such observations as occurred to me on the principal points, to which attention is now more particularly drawn, I need not on this occasion recapitulate opinions from which, as a member of the government, I find no reason to dissent, but I embrace this opportunity to record a few remarks called forth by the Minutes which have preceded mine.

1. *Hard Labour in Irons on the Roads.*—However desirable it appeared to me to insert this particular designation of punishment in the articles of war, I am now quite willing to acquiesce in the opinions expressed by the Governor-general, and in Mr. Amos's Minute of the 18th of April last, that the words "hard labour" might suffice for the terms of sentence. I am led to this conclusion by the consideration stated on this point in Mr. Robertson's Minute; for, as the actual infliction of labour on the roads in irons is not apparently likely to be abandoned for at least a considerable period, it will be resorted to for the punishment of military delinquents, even under the less definite terms of sentence proposed to be adopted.

I fully concur in the sentiments expressed by Mr. Robertson as to the necessity of empowering courts martial to sentence to imprisonment with labour. At present there

there is no more authority for such a sentence being awarded by a native general court martial than there is for the exercise of similar power by inferior courts martial; and with the powerful argument we have before us of the necessity and efficacy of this description of punishment, deducible from the continual resort to it by native general courts martial for some time past, with no other sanction than the confirmation of sentence by the Commander-in-chief, there can be no doubt that a limited recourse to the same punishment by inferior native courts martial would operate with the best effect on the discipline of the army.

As it appears probable that the promulgation of the articles of war will be postponed for a considerable time, I very earnestly unite with Mr. Robertson in attracting immediate attention to this subject, with a view to the enactment of a legislative measure empowering all native courts martial to sentence military persons to imprisonment with labour, for the offences for which in the proposed code of articles they are made liable to be so sentenced, making the same distinction which prevails in the code between the powers of general and inferior courts martial.

I can anticipate no objection to this enactment, because the punishment of imprisonment with labour is one upon which there is no difference of opinion, the terms in which it shall be designated being the sole question regarding it; and there will be no practical inconvenience in it, because such an enactment now promulgated, would be confirmed, not set aside, by the superseding authority of the code of articles whenever it should be legalized; while in the meantime the ends of discipline would be most effectually answered by the measure, and the want of the power of corporal punishment would be more speedily shown to be imaginary.

Without adverting to the second and third topics, upon which my opinions are unchanged, I pass on to the fourth topic, the punishment of flogging, regarding which, while I take this opportunity of reiterating my already expressed opinions, I beg to remark, that the case in the army of the Indus (a solitary one, I believe, since the army crossed that river), to which Mr. Bird in his Minute refers, has made upon my mind an impression very different from that which has operated upon his. That in certain situations, especially in such as that now occupied by the army of the Indus, difficulties will occasionally interfere with the immediate carrying into effect of a sentence of imprisonment with labour, is undeniable; but means may be emergently devised, or opportunity may be at no distant period presented, for readily effectuating such a sentence, and at any rate it is greatly preferable to undergo some portion of unavoidable difficulty, such as the case in question brings to view, rather than summarily to get rid of that difficulty by the introduction of corporal punishment, which, once re-established, will go far to undo the important advantages which it appears to me its abolition has secured to us. The difficulties occurring under the existing state of the law are not to be compared with those which would immediately flow in upon us with the re-introduction of corporal punishment. I say immediately, because, if there be any foundation for the strong impression on my mind that we are indebted to the abolition of the lash for the recent addition to the flower of our native army, in the late augmentations, the restoration of flogging would not only create extensive disgust with our service, but its subsequent discontinuance, should that measure come eventually to be found expedient, would supply no remedy for the evil intermediately introduced, because the vacillation in the conduct of government thus exhibited, would render its future proceedings justly open to distrust and apprehension.

As far as my information extends, the conduct of the army of the Indus shows most forcibly that there is no necessity for restoring the power of corporal punishment. Never was discipline more perfect than all the accounts which I have heard concur in representing it to be in that army, and yet the lash does not exist there; and although I am willing to allow that a substitute for corporal punishment has been greatly needed in the three presidencies, as regards the repression of minor offences, I report that, in my opinion, an immediate legislative measure such as I have before noticed, would be an effectual and a most convenient means of supplying that deficiency.

I cannot close these remarks without expressing my regret at the prospect of further delay by transmitting the articles of war for the consideration of the Honourable the Court of Directors. It has been repeatedly declared by those most conversant with the subject, and never has it been dissented from by any

No. II.—Part 2.
Articles of War.

one, that an urgent necessity exists for the promulgation of articles of war for the government of the native army; and yet, at this late date, after an unusually protracted period of discussion, it is proposed to await the instructions of the Honourable Court previous to their enactment. In my opinion, every additional delay is an additional injury to the service, and believing that we are now in possession of all necessary means for adapting the code to the purposes for which it has been compiled, I feel reluctantly constrained to record my dissent from the proposed reference.

(signed) *Wm. Casement.*

Calcutta, 29 July 1839.

Legis. Cons.
12 August 1839.
No. 44.
Articles of War.

MINUTE by the Honourable *A. Amos*, Esq.; dated 31 July 1839.

1. *Hard Labour in Irons on the Roads.*—I have before written fully upon this subject. This point may be considered as disposed of. The difference which existed was not as to the infliction of the punishment, but as to its insertion (unnecessary in a legal point of view) in the articles of war. Its insertion is no longer pressed.

2. *De bene esse Depositions.*—This is a subordinate point, not hitherto noticed in any articles of war, and applicable only under peculiar circumstances. I still continue to think that evidence which has not been subjected to the test of cross-examination (leaving out of consideration other defects) is, generally speaking, worse than no evidence at all. It may be observed that the best-intentioned witnesses are constantly substituting their own reasonings, and what they have heard, for their own knowledge. As to dying declarations, noticed by Lord Auckland, they have been losing ground very much of late in England, and are now confined to cases of murder, where the subject of the declaration are the circumstances of the murder.

3. *Specification of the Punishment of Death.*—I am inclined to modify my former opinion, which was doubtfully expressed, and to coincide with Lord Auckland, especially as, I presume, uniformity of practice could be insured by a general order.

4. *Christian Amenability.*—This point seems to be disposed of by having recourse to a circular order. I conceive the difficulty is not that pointed out by Lord Auckland, but that it consists in the fact that some Europeans at least attached to the native army must be subject to the articles of war provided by English statute for European soldiers in the service of the Honourable Company, and with which we are precluded from interfering; and that it may involve some of the nicest questions of Indian law to determine whether we can affect by our articles any and what descriptions of Europeans by birth or descent. It has been thought the safest course to subject all European Christians by birth or descent, some of them being already in that predicament, to the European articles; but as this would subject them to flogging, to remedy the anomaly by a circular order.

5. *Flogging.*—I could have wished that a medium course had been taken, by keeping the power in suspense, providing by the articles that it should not exist, except for such periods and on such occasions as government might by special order direct. Under all the circumstances, and considering that the last communication from the Court of Directors upon the subject was expressed in strong terms of disapprobation at the punishment being suspended, I incline to think it the best course that the papers should be submitted for the consideration of the home authorities.

Lastly.—A new point has been adverted to by Mr. Robertson and General Casement, viz. the propriety of empowering regimental courts martial to imprison with hard labour. This is provided for by the 72d Article. I will prepare a draft Act, upon which the expediency of intermediate legislation may be discussed.

(signed) *A. Amos.*

—(A.) No. III.—Part 1.—

MILITARY COURTS OF REQUEST.

Proposed Modification in Regulation VII. of 1832, Madras Code.

(No. 140.)

From *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission, to *R. D. Mangles*, Esq. Officiating Secretary to the Government of India, Legislative Department; dated 15th June 1838.

Legis. Cons. 12 August 1839. No. 15.

Sir,

With reference to the papers noted in the margin* on the subject of certain proposed modifications in Regulation VII. of 1832 of the Madras Code, I am directed by the Indian Law Commissioners to request that you will submit the following observations and recommendations to the consideration of the Honourable the President in Council.

2. The first communication contains several suggestions of his Excellency the late Commander-in-chief at Madras; these the Law Commissioners propose to notice successively, following generally the order in which they are there arranged.

3. First, in consequence of misapprehensions existing on the part of commanding officers as to the authority meant to be vested in them by sections 3 & 4 of Regulation VII. of 1832, it is suggested that the police powers intended to be conferred on officers commanding at military bazaar stations, and under their orders, in the senior commissariat officer at such stations, or other officer specially appointed by government, be precisely defined by law; that the officer in charge of the police at such stations should be declared *ex officio* coroner within the military limits; and that rules should be laid down regarding the constitution of the juries, the summoning and swearing of the jurors, and the administering of oaths to witnesses on the occasions of inquests held before him; and also for regulating the proceedings of military courts of inquiry beyond the frontier in like cases. It does not appear from the papers before the Commissioners that the inconveniences which have been felt from the want of more specific rules on the points above adverted to are so great as to call for special legislation for the purpose of remedying them; and the Commissioners are therefore of opinion that the full consideration of these suggestions may be most conveniently postponed to the general revision of the police regulations of the several presidencies.

4. Secondly, with reference to the abolition of corporal punishment in the native army by order of the Supreme Government, it is suggested that imprisonment for a term not exceeding one month be substituted for the corporal punishment authorised by sections 15 and 16 of the Regulation in question, in combination with imprisonment in aggravated cases. The Commissioners have already had before them the draft of an Act for the abolition of corporal punishment generally in the criminal courts under the Madras Presidency, which was transmitted for their consideration with Mr. Macnaghten's letter of the 7th September 1835, and on this subject it is only necessary to refer you to the remarks contained in paragraphs 2, 3, and 4, of my reply to that letter, dated the 14th September 1837.

5. Thirdly, it is suggested that the extension of Article 7, sec. 12, of the articles of war for the native troops, by clause 1, sec. 21, of Regulation VII., 1832, should be made applicable to actions of debt not exceeding 400 rupees against native commissioned officers who are not included in the military classes specified in sec.

* 1. Mr. Macnaghten's Letter to the address of Mr. Millett, dated the 21st December 1835 (No. 85), and the first packet enclosed therewith.
2. Mr. Macnaghten's Letter to the address of Mr. Millett, dated the 19th December 1836 (No. 369), and the third packet enclosed therewith.
3. Mr. Macnaghten's Letter to my address, dated the 8th May 1837 (No. 129), and the papers enclosed therewith.

No. III.–Part 1.
Military Courts of Request.

sec. 13 of that Regulation. In this recommendation the Law Commissioners entirely concur.

6. Fourthly, it is proposed to declare expressly that the restrictive provisions of clause 2, sec. 21, apply to all punchayets assembled under the Regulation, and to courts martial held under clause 3, sec. 42, of the same. Many illegal awards, it is added, have already occurred from the want of such explanatory clause.

The Commissioners presume that this recommendation, in so far at least as punchayets and courts martial assembled under sec. 42 of the Regulation are concerned, was founded on former constructions of the Sudder Adawlut, wherein it was held that the provisions of sec. 42, were subject to the restrictive clause referred to. But by a late interpretation of the Sudder Court,* those constructions have been overruled, and it is now determined that the suits mentioned in clause 2, sec. 21, are not excluded from the cognizance of punchayets and courts martial assembled under sec. 42. The Law Commissioners consider the law as settled by the latter interpretation as the most expedient.

The Commissioners do not perceive that the Sudder Adawlut have ever ruled that any description of suits for sums of money or other personal property are excluded from the cognizance of punchayets assembled under the authority of sec. 24, by reason of anything contained in clause 2, sec. 21, of the Regulation; and if this be so, the Law Commissioners do not find any necessity for the proposed explanation of this section.

7. Fifthly, it is proposed that the restrictive provisions of section 32, limiting the award of interest to 12 per cent., should be made applicable to punchayets and courts martial held under the special provisions of sec. 42.

In this suggestion the Commissioners cannot concur. They are of opinion that, as a general rule, the party liable should be bound to pay the amount of interest he may have agreed to pay, though more than 12 per cent., and that in cases where no specific rate may have been stipulated for, the amount of interest to be awarded should be regulated by the rate usually paid in transactions of a like nature.

8. Sixthly, it is proposed to declare expressly that land or other real property cannot be seized or sold in satisfaction of the awards of punchayets or courts martial assembled under this Regulation or the articles of war for the native troops, for the decision of civil suits.

From this suggestion also the Commissioners see reason to dissent. It appears to them that a debtor's property, both real and personal, should be liable to be sold in satisfaction of any decree or award passed by a regularly constituted court or other competent authority; provision being made that all attachments and sales be effected through the court within the local jurisdiction of which the property may be or be situated.

9. Seventhly, it is observed, that by clause 3, sec. 42, of the Regulation, courts martial may, under certain circumstances, be assembled for the decision of civil suits to any amount; but that as the law now stands, the debtor, in default of payment, can only be dealt with in the manner prescribed by article 7, sec. 12, of the articles of war for the native troops, regulating the procedure for giving effect to the awards of courts martial held for the decision of civil suits to a limited amount. It is suggested therefore, that the concluding provision of section 33 of the Regulation, which, according to a decision of the Sudder Adawlut, applies to the proceedings of punchayets only, should be made applicable to the proceedings of courts martial held under clause 3, sec. 42.

In this recommendation, as far as it goes, the Commissioners entirely concur, but, as observed in the preceding paragraph, they would extend the rule to all decrees of military courts and authorities. From the general terms employed in the proviso in clause 1, sec. 33, of the Regulation, they conclude that both real and personal property are liable to be sold by the zillah judge in satisfaction of the award of a punchayet.

10. Eighthly,

* See letter from the Registrar of the Sudder Adawlut to the Officiating Secretary to Government of Fort St. George, Judicial Department, dated 12th June 1834.
Extract from the proceedings of the Sudder Adawlut, under date the 7th August 1834, and
Letter from the Registrar of the Sudder Adawlut to the Chief Secretary to the Government of Fort St. George, dated the 28th December 1836, enclosed with Mr. Macnaghten's Letter of the 8th May 1837 (No. 129).

10. Eighthly, the Sudder Adawlut having ruled, that in cases where a charge of partiality may be preferred against a punchayet, and a court martial be thereupon assembled, under clause 3, sec. 42 of the Regulation, the court is in the first instance to investigate the charge of partiality, and upon such being established to the satisfaction of the court, then to try, decide, and determine the suit; it is suggested that this preliminary investigation should be clearly directed and made prescriptive by the Regulation itself. To this suggestion the court of Sudder Adawlut have added another, viz. that it may be further enacted that if the party fails in establishing the charge of partiality, the award of the punchayet is not to be disturbed. The Commissioners think that these proposed additions to the present law may be made with advantage.

11. Lastly, His Excellency the Commander-in-chief observes, that the Sudder Adawlut have decided that there is not any authority empowered to revise the proceedings of military courts held for the decision of civil suits, under Regulation VII. 1832, or the articles of war for the native troops, and that much evil assuredly arises from the consequent necessity of carrying into effect awards which are manifestly unjust; he submits, therefore, whether the proceedings of such courts should not be held subject to revision, and dependant upon the confirmation of the superior officer, in like manner with the proceedings of all other military courts whatsoever. At the same time his Excellency suggested that, previously to deciding this point, it might be desirable to obtain the opinion of the Advocate-general as to the position of military courts of request held under the provisions of sec. 57, 4 Geo. 4, c. 81, for the cognizance of actions of debt against European officers and soldiers; as in the event of the awards of such courts being understood to be final, and independent of revision and confirmation, it might not be right to make a different provision by regulation for the procedure of courts in suits where the defendant is a native of India.

It appears from the letter of the Register of the Sudder Court to the Chief Secretary to Government, dated the 21st October 1835, that the above question was accordingly referred to the Advocate-general, who in reply stated his opinion that the decisions of military courts of request, held under sec. 57 of 4 Geo. 4, c. 81, are final, and not subject to revision.

This opinion, the Sudder Court observe, confirms the correctness of their own construction of Sec. 33, Regulation VII. 1832, viz. That under the law as it now stands, the duties of the convening officer are purely executive; that he may on his own responsibility refuse to execute, but that he cannot in any way interfere with the judgment, and can neither order a revision nor a new trial.

As a general rule, the Commissioners deem it of great importance that every decision of a court of first resort should be open to revision before a superior court of appeal; but with reference to the peculiar constitution of the military courts under the articles of war for the native army, and the provisions of Regulation VII. 1832, they are not prepared to recommend an appeal from their judgments in civil suits, to the commanding officer, or render those judgments dependant on his confirmation; and they are also inclined to attach some weight to the consideration of maintaining an uniformity of procedure in the above courts, and those established by the Act 4 Geo. 4, c. 81.

12. The second communication under reply relates to certain resolutions passed by the government of Fort St. George, on the 13th August 1833, and approved by the Honourable Court of Directors, in a despatch dated the 30th September 1835.

13. By the first resolution it was determined that a criminal sentence duly passed and confirmed by the constituted military authorities, under the provisions of Regulation VII. 1832, cannot be modified or mitigated by any authority but that of government, and it was considered sufficient to declare this by a general order, directing that a reference be made to government whenever the officer by whom a sentence had been passed or confirmed under Regulation VII. 1832, deemed it proper that it should be modified or mitigated, stating the alteration which was considered requisite. The Commissioners have no remarks to offer on this subject. The power of remitting any punishment, either wholly or in part, is understood to be inherent in the government, and there does not seem to be required any legislative provision for regulating the manner in which it shall be exercised.

14. The second resolution is to the effect, that when a military court or a punchayet assembled by the officer in charge of the police, may exceed their jurisdiction, a summary appeal should be allowed to the zillah judge, who should

No. III.–Part 1.
Military Courts of Request.

be authorised, upon receiving such an appeal, to require the officer in charge of the police to stay the execution of the decree or award complained against, and to forward a copy of it to him, and if he should be satisfied, upon consideration of the decree or award, that the matter adjudicated was not subject to the jurisdiction of the court or punchayet, to pass an order quashing the proceedings. The Commissioners entirely concur in the propriety of providing an appeal of the nature above described.

15. The third communication relates to the question whether, with reference to Clause 2, Sec. 21, Regulation VII. 1832, military courts and punchayets, assembled under sec. 42 of the same, could take cognizance of claims to real property situated in cantonments beyond the frontier. The circumstances given by the Sudder Adawlut on this subject have already been adverted to in para. 6 of this letter, and the question has now been determined in the affirmative.

The Commissioners are of opinion that cases involving the right to real property, situated in British cantonments beyond the frontier, and generally in British cantonments in provinces, where no British civil courts may have been established, should be cognizable by military courts, and they think that courts of the nature of those specified in Clause 3, Sec. 42, of Regulation VII. 1832, of the Madras code, would be well qualified to decide such suits.

16. In conclusion, I am directed to observe that although from the tenor of the references under reply, the Commissioners were led to infer that it was the intention of government that the subjects of them should be taken up in their due course in the general revision of those branches of the law with which they are connected, they have yet been induced to submit their opinions on most of the points treated of, from a knowledge that a draft of new articles of war for the native troops, including rules for military courts of request, is now under the consideration of government. That draft it will be recollected, was referred to the Law Commission, and returned to you with my letter of the 12th January last, and on the 12th of February I had the honour of communicating some additional remarks on the same subject. The Commissioners, however, would wish it to be understood, that the opinions which they now submit on the several points discussed, have been formed with reference to the law as it now exists under the Madras presidency, and that they reserve their sentiments on the general principles of that law, to a future and more comprehensive examination of its merits.

I have, &c.
(signed) *J. C. C. Sutherland,*
Secretary.

Indian Law Commission,
15 June 1838.

(No. 2698.)

Legis. Cons.
12 August 1839.
No. 16.

From *J. Thomason*, Esq. Officiating Secretary to the Governor-general, N. W. P. to *T. H. Maddock*. Esq. Officiating Secretary to the Government of India, Legislative Department, *Fort William.*

Sir,

Judicial Dep.

It being understood that the construction of the military court of request is now under the consideration of the Honourable the President in Council, in the Legislative Department, I am directed by the Right honourable the Governor-general to transmit the copy of a petition from Mr. J. Rawlins, a resident at Agra, for such attention as the general points noticed in it may be considered to deserve.

I have, &c.
(signed) *J. Thomason,*
Offg Secy to the Governor-general N. W. P.

Simla, 13 October 1838.

To his Excellency the Right honourable Lord *Auckland*, Governor-general of British India, &c. &c. &c.

The Petition of *John Rawlins*,

Most humbly showeth,

That your Lordship's petitioner (a clerk or writer by occupation, and at present a resident of Agra, in which station he has resided for years, in the city, only

No. III.-Part 1.
Military Courts of Request.

only occasionally as a visitor, abiding in the military cantonments amongst his relations and friends, and possessing some landed property in both the civil and military jurisdictions; in the latter in the range of the old Sudder bazaar adjoining the city), had, on the 4th of the present month of September, while residing at Boileau Gunge, in the suburbs of the city and zillah of Agra, within the bounds of the civil jurisdiction, a summons served on him by an orderly sepoy, directing him to appear before a military court of request, to defend a complaint laid against him, and which would assemble the next day at 10 o'clock, A. M., at Colonel Buckley, the president's quarters. The summons was signed by Ensign Nation, as adjutant of the week. *Vide* No. 1.

Your Excellency's petitioner begs to state, that after being served with the summons, he wrote on a paper presented to him by the orderly for signing the receipt and delivery of the said summons, that he was a resident of the civil lines, and therefore not amenable to a military court; notwithstanding which, the said court decreed the suit *ex parte* against your petitioner, because he did not appear to defend the suit. No. 2.

Your Lordship will be graciously pleased to consider the subjects now laid before your Excellency's notice by your Lordship's petitioner, and which he engages himself to prove, if required.

Your Excellency's petitioner begs leave most humbly to state, that he knowingly and wilfully did not attend the said court, as he was beyond the sphere of its control, and subject to the civil law courts, whither, if summoned, he would have gladly appeared. It is not barely having the case decreed against him, that has induced him to obtrude on your Lordship's notice, but its subsequent effect, as the peons of the military authorities, under Captain Ramsay, the superintendent of the military police, are at present on the look-out after your Lordship's petitioner to seize him, in order that the award of the military court may be enforced. While your Lordship's petitioner remains within the civil lines, he is beyond their control, but as the system of laying perdue is not only both repugnant and hateful to his ideas and feelings, but likewise a tacit acknowledgment of the power of the said court over him, he feels himself constrained to represent the case for your Lordship's consideration, as, should any occasion call him within the verge of the military lines, he would be arrested, and though after justice might be done him, the disgrace that would be inflicted would be indelible.

The above is not the first or only instance by which your Lordship's petitioner has become a sufferer from the awards of a military tribunal. In the month of June last past, when your Excellency's petitioner was a temporary resident of the military cantonment, superintending the mercantile business of a relation who had gone down to Calcutta, he was most unexpectedly ordered by Captain Ramsay, sub-assistant commissary-general, to pay the sum of rupees nine and four annas; being the amount of two awards of the same military court of request decreed against him, though at the same time your Lordship's petitioner was totally ignorant of such suits having been laid against him, and also by whom, when, and on what account; and on application to the major of brigade, Captain Maule, the only satisfaction gained was, "that some mistake or inadvertency had occurred in your not being served with a notice;" and without any show of justice, he was obliged either to pay, or abide the alternative of having his property seized and sold to make good the award of the court. Being obliged *nolens volens* to pay, he did so, and delivered the money into the hands of Captain Ramsay personally, at the same time stating the hardness of his case, requesting investigation and fair play, but uselessly. *Vide* Nos. 3 & 4. *Vide* No. 5.

To this present moment your petitioner is unaware of the nature of the debt, how and when incurred, and to whom it was due.

Your Lordship's petitioner was once served with a summons, after the court had sat, but as the plaintiff was fortunately absent, it was thrown out.

Your Excellency's petitioner does not wish to engross too much of your Lordship's valuable time; but in the above cases where else can be obtained redress? The civil power, he believes, are precluded from interfering, and so are the military, at least it would seem so, as the present Commander-in-chief, when petitioned by a merchant at Allahabad, replied that he had no power to interfere with the awards of a military court of requests, they being established by Act of Parliament.

Your petitioner only craves strict and impartial justice may be doled out to him,

No I.-Part 1. Military Courts of Request.

him, as in one case, the court have, to say the least, acted heedlessly, in deciding a suit without first ascertaining whether the defendant was liable or amenable to their authority or not; in the second one, unjustly, as they did not give the defendant an opportunity to defend himself. The last instance speaks for itself and requires no comment.

Your Lordship's petitioner does not wish to enter into a specification of the many disagreeable inconveniences a non-military individual is subject to by attendance and amenability to the above kind of courts, as they would fill a volume; but he cannot refrain from intimating for your Lordship's information, the reason why natives are always so peculiarly eager to complain before it. The reason is simple, it costs nothing, and there is no appeal from its decision,* as in the civil court, they would have to purchase stamps, besides other expenses incidental to civil suits.

Your petitioner begs leave to solicit most humbly that your Excellency will take his case into consideration, and grant him redress, or some rule be laid down to prevent a further recurrence of such applications for justice, as the benefit will not only be felt by your Lordship's petitioner, but will extend itself to the community at large, who are unwilling to come forward, lest they should not obtain redress, and as in duty bound, your Lordship's petitioner will ever pray.

(signed) *John Rawlins.*

(True copy.)

(signed) *J. Thomason,*
Offg Secy to the Governor-general,
N. W. P.

Agra, 19 September 1838.

Legis. Cons. 12 August 1839. No. 17.

(No. 285.)

EXTRACT from the Proceedings of the Honourable the President in Council in the Military Department, dated 18 June 1838.

READ a letter (No. 1483), from the Secretary to government, Military Department at Bombay, dated, the 22d ultimo, transmitting copy of the Regulations under which military courts are convened, and their proceedings conducted, under that presidency.

Ordered, that the foregoing letter from the secretary to government in the Military Department at Bombay, and the copy of Regulations which accompanied it, be transmitted in original to the Legislative Department, with reference to extract No. 17 from that department, under date the 6th November last.

Ordered also, that the original papers be returned to this department when no longer required.

(True extract.)

(signed) *J. Stuart,* Lieut.-colonel
Offg Secy to the Government of India,
Military Department.

(No. 1483.—Military Department.)

Legis. Cons. 12 August 1839. No. 18. Enclosure.

From *E. M. Wood,* Lieutenant-colonel, Secretary to Government, to the Officiating Secretary to the Government of India at *Fort William.*

Sir,

I AM directed by the Right honourable the Governor in Council to acknowledge the receipt of your letter of the 11th of December last (No. 139), with enclosure, and to transmit to you the accompanying copy of the Regulations under which military courts of request are convened, and their proceedings conducted under this presidency, as therein called for.

I have, &c.

(signed) *E. M. Wood,* Lieut.-colonel,
Secretary to Government.

Bombay Castle, 22 May 1838.

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* If against Europeans who are non-military, the magistrate, as justice of the peace, confirms it, from which sentence the appeal only lies before the Supreme Court, *vide* 53 Geo. 3, and consequently beyond the reach of a poor man. Even by resolutions of 1820, the civil court will confirm the same, without inquiry as to their amenability or otherwise, and sell their property to make it good.

EXTRACT from the Bombay Regulations, No. XXII., A.D. 1827.

Chapter II.

Of the Military Court of Request for deciding Civil Actions for Debt, and of the Jurisdiction to be exercised by Courts Martial in Criminal Offences.

A military court of request (the superintendent of bazaars occasionally supplying its place) may try certain actions for debt.

Section 7, Clause 1. WHEREVER any of the Company's forces may be employed beyond the jurisdiction of the court of request established at the presidency, actions for debt and all personal actions not exceeding four hundred (400) Bombay rupees in amount against a person belonging, both where the suit is instituted, and also when the cause of action arose, to any of the descriptions stated in section 3, clause 1 of this Regulation shall be cognizable before a court of request composed of military officers, and not by the ordinary tribunals within the territories subordinate to Bombay; provided, however, that the superintendent of bazaars, or other staff officer when there is no superintendent, may be employed in lieu of the said court, as denoted in section 32.

How convened and composed.

Clause 2. The commanding officer of any station or cantonment is authorised to convene such courts, which shall be composed (according to the orders of the Commander-in-chief or commanding officer of the forces for the time being, or, in the absence of such orders, according to the discretion of the commanding officer), either of not less than three European commissioned officers, or of not less than three native commissioned officers, with an European commissioned officer to superintend and record the proceedings.

Its forms of procedure.

Clause 3. Each member of the court shall take an oath, according to his religious tenets, to do impartial justice; the forms, proceedings, and records, shall be as usual in courts martial, and the attendance and evidence of witnesses, not subject to military law, shall be procured under the rules contained in section 5 of this Regulation.

How the decisions are to be executed.

Section 8, Clause 1. It shall be competent to the court, on finding any debt or damage due, to award execution of the decision, either generally, or by directing that the whole or any part of the amount be stopped and paid over to the creditor out of any pay or public money which may be coming to the debtor in the current or any future month.

By seizure and sale of effects that are,

Clause 2. And if the execution be awarded generally, the amount, if not paid forthwith, shall be levied by seizure and public sale of such of the debtor's goods as may be found within the camp, garrison, or cantonment, under a written order of the commanding officer, grounded on the judgment of the court.

Or subsequently may be in camp.

Clause 3. And if sufficient goods be not so found, then any which may subsequently be found within the said limits shall be liable to be seized and sold as above said, in satisfaction of the remainder of the debt or damage, or any public money or sum not exceeding the half-pay accruing to the debtor shall be stopped in liquidation of the said debt or damage; and if such debtor shall not receive pay as an officer or soldier, or from any public department, he shall be arrested by written order of the commanding officer, and imprisoned in some convenient place within the said limits for a period of two (2) months, unless the amount be sooner paid.

By stoppages.

Or by Imprisonment.

Presidency Division of the Army, Head-quarters, Bombay, 16 November 1827.

Sir,

I HAVE the honour to forward to you, for the consideration of his Excellency the Commander-in-chief, a letter, with four accompaniments from Major Roome, regarding a court of request held in the 20th regiment native infantry, at Bhewndy.

Having requested of the Judge Advocate-general to favour me with his opinion on the subject of these papers, I beg leave to hand you also a copy of the letter conveying that officer's observations on the occasion.

No. III.-Part 1. Military Courts of Request.

As a doubt exists in regard to the law by which courts of this nature are to regulate their proceedings, I beg to be favoured with instructions on this point, in order that one uniform mode for trial and taking of evidence may be attended to in future.

As the parties now concerned have been placed in arrest and put in confinement, in consequence of being charged with the crime of perjury, which cannot be attached to them, I shall direct Major Roome to cause the prisoners to be instantly released, and I await such commands as his Excellency may be pleased to communicate for my further guidance.

I have, &c.
(signed) *D. Leighton*,
Lieut.-col. Com^{g} Pres^{y} Div^{n}.

To the Adj.-gen. of the Army,
Bombay.

From *Vans Kennedy*, Esq. Judge Advocate-general, to the Officer commanding the Presidency Division of the Army.

Sir,

I HAVE the honour of returning the accompanying papers relating to a court of request held at Bhewndy, and beg leave to state for your consideration the following remarks on the subject.

No point in English law is more clearly laid down than that in civil actions, the parties in a cause cannot be admitted as witnesses; for Peake, in his Law of Evidence, p. 157, says, "From what has been already said, it may be taken as a general rule, that a party in a cause cannot be examined as a witness, for he is in the highest degree interested in it;" and Phillipps, in his work on the same subject, p. 32–35, also remarks, "A party to the suit on record cannot be witness for himself for a joint suitor, nor against the adverse party, on account of the immediate and direct interest which he has in the event, either from having a certain benefit or loss, or from being liable to costs. As a party to the suit is not suffered to be witness in support of his own interest, so he is never compelled in courts of law to give evidence for the opposite party against himself."

According to the English law, therefore, there can be no doubt of the illegality of these proceedings; but in the second chapter of the government Regulation XXII. of A. D. 1827, nothing whatever is said with respect to the law of evidence which is to be observed by courts of request, and it is, therefore, uncertain whether government intended that they should regulate their proceedings by the law of England or by the Regulations established for the observance of the courts of Dewanee Adawlut. If the latter, however, be the case, as seems most likely, it is thus laid down in the 28th section of the government Regulation IV. of A. D. 1827:

"Clause 1. If one of the parties should refer the truth of the whole matter in dispute, or of any item in the same, or of any material fact, to the oath of the other party, the judgment of the court shall be governed by the oath of such party, if he consent to take the oath, whether admitting or denying the matter so referred to him.

"Clause 2. If each party refer the same matter to the oath of the other, the court shall decide to which of them the oath is to be first tendered." Until, therefore, this point be determined, it is obviously impossible to decide on the proper manner of proceeding which ought to be adopted by courts of request; but in the present instance, the consent of the party to whom the oath was administered not having been obtained, the court of request has, under either supposition, acted illegally.

The opinion of the superintending officer of this court that Jemedar Ragnac and Private Ramnac Bhagnac have been guilty of perjury, is most extraordinary, for it rests on no sufficient grounds. It is only evident that all the three persons examined have deposed in a manner entirely different, and that the court has not done its duty in having omitted to ascertain the real merits of the case by other testimony. Similar remarks apply to the second case of Esoo Patha Sing *versus* Shaik Ismail. The superintending officer seems to have entirely forgotten that no person, particularly a native officer, ought to be accused of perjury except on the clearest proof that he had given false testimony knowingly and wilfully.

wilfully. But had perjury occurred in these instances, the mode of proceeding to be adopted in consequence remains subject to doubt; for in the third chapter of the government Regulation, the giving false testimony on oath before a court martial is included among the offences relating to the Military Department, but cognizableby a civil court; as, however, the court of request is nowhere in this Regulation called a court martial, it is obviously uncertain whether or not the 15th section of that Regulation applies to the giving of false testimony in a court of request.

I have, &c.

Bombay, 15 Nov. 1827. (signed) *Vans Kennedy*,
Judge Advocate-general.

(True copy.)

(signed) *Thomas Gordon*,
Major of Brigade, Pres^{y} Div^{n} of the Army.

(No. 3154—Military Department.)

Sir, Bombay Castle, 14 Dec. 1827.

I AM directed to acknowledge the receipt of your letter of the 3d instant, (No. 447,) and in reply to state that the courts of request established by Regulation XXII. having jurisdiction over those persons only who might have been subjected to the jurisdiction of the country courts, and were previously so, should regulate their proceedings, as Colonel Kennedy suggests, as far as may be practicable by the practice of the country courts.

False swearing before any authority empowered by Regulation to administer an oath, is perjury by Regulation XIV. Section 16, so that any person committing that crime before a military court of request, whose proceedings by Regulation XXII. Section 7, Clause 3, are the same as those of courts martial (for which on this point, see section 5,) would be sent to the civil authorities, with a certainty it appears of meeting with punishment if the offence were proved.

I have, &c.

(signed) *W. Newnham*,
Chief Secretary.

P. S.—The original papers accompanying your letter are herewith returned.

Head-quarters, Bombay, 17 January 1828.

Extract from General Orders by the Honourable the Governor in Council.

Bombay Castle, 16 January 1828.

Third. NATIVE military courts of request will also, in receiving evidence, and in making their awards, be guided by the local or provincial law of the country as administered under the Regulations of government.

By Order of the Honourable the Governor in Council.

(signed) *W. Newnham*,
Chief Secretary.

(No. 393 of 1831.)

Head-quarters, Bombay, 26 October 1831.

Extract from General Orders by the Right honourable the Governor in Council.

Bombay Castle, 25 October 1831.

THE Right honourable the Governor in Council is pleased to direct that the following Regulation be published to the army in General Orders.

No. III.–Part 1. Military Courts of Request.

(Military Branch.)

Regulation XVII. A.D. 1831.

(Supplement I. to Regulation XXII. A.D. 1827.)

A REGULATION for extending the Powers of the Court of Request, constituted under Clause 1, Sect. 7, Regulation XXII. A.D. 1827, when sitting in places beyond the British Territory, passed by the Right honourable the Governor in Council of Bombay, on the 14th day of September 1831, corresponding with the 8th Bhadrapied Sood sumbut or Vikramaget, Era 1887, Sabbahan 1753, Fusley 1241, Soorun 1232, and 7th Rubee-ul-Akhur 1247, of the Hijree.

Preamble. Whereas great hinderance and obstruction to the recovery of just and lawful claims against persons residing within the limits of cantonments and military stations beyond the British territories, having been found to exist, in consequence of the sums indebted being of larger amount than can be taken cognizance of by the court of request, constituted under Clause 1, Sect. 7, Regulation XXII. A.D. 1827, it has been deemed expedient, in order to meet this exigency, that the powers of the court of request, when sitting in places beyond the British territory, be extended; the following rule has therefore been enacted, to have effect from the date of promulgation.

The limitation (Rs. 400) of claims cognizable before a court of request, declared not to be applicable when such court is sitting in places beyond the British territory.

Sect. 1. It is hereby declared, in modification of Clause 1, Sect. 7, Regulation XXII. A.D. 1827, that the limitation of claims cognizable by courts of requests under that section, to sums not exceeding Bombay rupees four hundred (400), shall not be held applicable to those courts when sitting in places beyond the British territories, but claims of the nature therein described shall be cognizable, whatever may be the amount.

By Order of the Right honourable the Governor in Council.

(signed) *C. Norris,*
Chief Secretary.

(True extract and copies.)

(signed) *S. Powell,*
Lieutenant-colonel, Adj.-gen. of the Army.

Head-quarters, Bombay, 1 April 1835.

General Orders by the Commander-in-chief.

1. THE Commander-in-chief is pleased to republish the following General Order by his Excellency the Commander-in-chief of the Madras army, for the constitution of military courts of request, and to declare its provisions equally applicable to this presidency.

General Orders by his Excellency the Commander-in-chief.

Head-quarters, Choultry Plain, 10 February 1835.

1. The Commander-in-chief is pleased to publish the following memoranda for the constitution of military courts of request, assembled under the provisions of Act 4 Geo. 4, c. 81, and for the guidance and disposal of their proceedings.

1. In all practicable cases, a field officer is to be detailed as president of such courts; and captains or subalterns, of not less than eight years' standing, as members.

2. The court having met, the members and president are duly sworn upon each trial separately.

3. The plaintiff and defendant being both in court, the court inquires of the plaintiff (not upon oath) what the nature of his demand is; and on this being stated, interrogates the defendant (not upon oath) as to whether he owns the debt, and acquiesces in the statement of the plaintiff or not. This preliminary examination of the parties is to be conducted by the court to such extent as may appear to be desirable; and it is to be remembered that such declarations as either party may make against his own interest, although not upon oath, are good evidence against himself.

4. Should the defendant acknowledge the debt, a decree is then passed and recorded accordingly, and the court closes its proceedings on the case.

5. Should the defendant deny the debt, the plaintiff is called upon for his proofs, and his witnesses being produced, are examined on oath by the court, subject to cross-examination by the defendant, and their evidence recorded.

6. The

6. The defendant is then, in like manner, called upon, and the evidence of the witnesses on the defence, subject to cross-examination by the plaintiff, is duly recorded.

7. The court then decides according to the evidence before it, and the decision is entered upon the record; special attention being given, in the event of finding any debt or damage due, to the provisions of section 57 of 4 Geo. 4, c. 81, and to the mode of proceeding therein prescribed.

8. Although neither party can be sworn, in support of his own cause, at his own desire, yet either party may be required by the other to give answer upon oath, or may be ordered by the court so to do. But it is only usual for the court to resort to such a measure when a decision is about to be pronounced upon the statements of the parties only, without evidence of any kind, or when the evidence adduced is altogether insufficient and unsatisfactory; in such cases the court directs such party to be sworn, as it may deem best.

9. If either party, having been sworn at the request of the other, make such answer as may be prejudicial to the cause of the adverse party, such evidence must nevertheless be received and recorded, and due weight given to it accordingly.

10. If a party refuse to be sworn when requested by the other party, or ordered by the court, such refusal is to be deemed contumacious, and tantamount to a confession against himself, and judgment is to be passed and recorded against him accordingly.

11. One party having been sworn at the request of the other, or by order of the court, the other party is not in any case to be sworn. The plaintiff may, if he please, require the defendant to be sworn in support of the prosecution, and this precludes the defendant from making a like demand on the defence.

12. A court of request cannot, in any case, decide suits touching land or houses; neither can it, on any pretence, direct such to be seized or sold, in satisfaction of its judgments or decrees.

13. A court of request is essentially a court of equity and conscience, not bound down by the same strictness of rules and form which attaches to the courts of law generally, and the members thereof are to recollect that they are to make such inquiry as may enable them, according to their conscience, to do entire justice to both parties. A claim for money due, for instance, might be met by a counter statement of damage done by the adverse party; and the court would then make inquiry and decide according to the equity of the case. *A.* being servant of *B.*, claims wages due; *B.* admits that the wages are due, but states that certain articles intrusted to the said *A.* his servant, of equal or greater value than the wages due, have been wantonly lost or destroyed by him; the court would, thereupon, require evidence, first, as to the actual intrusting of the articles in question to *A.*, and secondly, as to their value, and the circumstances under which they were lost or destroyed, and then pronounce judgment accordingly.

☞ In all places where the said Company's forces now are or may be employed, or where any body of His Majesty's forces may be serving with the forces of the said Company, situate beyond the jurisdiction of the courts of request established at the cities of Calcutta, Madras, and Bombay respectively, actions of debt, and all personal actions against such officers, non-commissioned officers, or soldiers, all persons licensed to act as sutlers to any corps or detachment, or at any station or cantonment, or other persons amenable to the provisions of this Act, or resident within the limits of a military cantonment, shall be cognizable before a court of request composed of military officers, and not elsewhere; provided the value in question shall not exceed 400 sicca rupees, and that the defendant was a person of the above description when the cause of action arose; which court the commanding officer of any station or cantonment is hereby authorized or empowered to convene; and the said court shall, in all practicable cases, consist of five commissioned officers, and in no instance of less than three, and the president thereof shall not be under the rank of a captain; and every member assisting at any such court, before any proceedings to be had before it, shall take the following oath upon the Holy Evangelists, which oath shall be administered by the president of the court to the other members thereof, and to the president by any member having first taken the said oath; (that is to say,)

"I swear, that I will duly administer justice according to the evidence in the matter that shall be brought before me.

"So help me God."

And every witness before any such court shall be examined on oath, which such courts are hereby authorised to administer, or if natives of the East Indies, on oath or solemn declaration, as the circumstances of the case may require; and it shall be competent for such courts, upon finding any debt or damage due, either to award execution thereof generally, or to direct that the whole or any part thereof shall be stopped and paid over to the creditor out of any pay or public money which may be coming to the debtor in the current or any future month; and in case the execution shall be awarded generally, the debt, if not paid forthwith, shall be levied by seizure and public sale of such of the debtor's goods as may be found within the camp, garrison, or cantonment, under a written order of the commanding officer, grounded on the judgment of the court; and the goods of the debtor, if found within the limits of the Company's garrison or cantonment to which the debtor shall belong at any subsequent time, shall be liable to be seized and sold in satisfaction of any remainder of such debt or damage; and if sufficient goods shall not be found within the limits of the camp, garrison, or cantonment, then any public money, or any sum not exceeding the half-pay accruing to the debtor, shall be stopped in liquidation of such debt or damage; and if such debtor shall not receive pay as an officer or soldier, or from any public department, but be a sutler, servant, or follower, he shall be arrested, by like order of the commanding officer, and imprisoned in some convenient place within the military boundaries, for the space of two months, unless the debt be sooner paid.

No. III.–Part 1.
Military Courts of Request.

14. No creditor can be allowed to divide his demand against the same person into several suits, for the purpose of reducing it within the jurisdiction of a court of request, but if he be willing to limit and restrict his entire demand to the sum of 400 rupees, and to quit claim to the surplus of debt over and above the said sum, then his suit may be so admitted accordingly.

15. The statements of the parties, as well as all evidence admitted by military courts of request, are invariably to be entered on the record.

16. The proceedings having been concluded on the particular case, are to be sent to the commanding officer, in order to the judgment of the court being duly carried into effect.

17. The proceedings of the military courts of request are to be recorded separately upon each trial, and the record is finally to be deposited in the station or cantonment office.

(signed) *T. H. S. Conway*,
Adjutant-general of the Army.

(No. 180.)

Legis. Cons. 12 August 1839. No. 20.

EXTRACT from the Proceedings of the Honourable the President in Council, in the Military Department, under date the 8th October 1838.

READ a letter (No. 2981) from the Secretary to Government, Military Department, at Fort St. George, dated the 11th ultimo, transmitting a Report from the Judge Advocate-general of the Madras army, accompanied by three Appendices, upon the laws and regulations regarding courts of request and courts martial for civil suits.

Ordered, that the foregoing letter from the Secretary to Government, Military Department, at Fort St. George, and its enclosures, be transmitted in original to the Legislative Department, in continuation of Extract (No. 285), under date the 18th June last.

Ordered, that the original papers be returned to this department when no longer required.

(True extract.)

(signed) *J. Stuart*, Lieut.-colonel,
Officiating Secretary to the Government of India,
Military Department.

(No. 2981.—Military Department.)

Legis. Cons. 12 August 1839. No. 21. Enclosure.

From Lieutenant-colonel *S. W. Steel*, Secretary to Government, Fort St. George, to the Secretary to the Government of India, Military Department, dated Fort St. George, the 11th September 1838.

Sir,

I AM directed by the Right honourable the Governor in Council to transmit herewith the accompanying Report, prepared by the Judge Advocate-general, regarding military courts of request, as called for in your despatch (No. 138), dated the 11th December 1837.

I have, &c.
(signed) *S. W. Steel*, Lieut.-colonel,
Secretary to Government.

Legis. Cons. 12 August 1839 No. 22. Enclosure.

From *R. Alexander*, Esq. Judge Advocate-general, to his Excellency Lieutenant-general Sir *Peregrine Maitland*, K.C.B., Commander-in-chief, dated 13th August 1838.

Sir,

IN obedience to your Excellency's orders, I have the honour to submit a Report upon the laws and regulations regarding courts of request and courts martial for civil suits, and upon the facts and results exhibited in the several papers which have been forwarded to me.

1. Section

1. Section 57 of the 4 Geo. 4, c. 81, contains the law generally applicable to the European troops serving the East India Company. Laws and regulations in force at present.

2. The 7th article, 12th section, of the articles of war for the native army, authorizes courts martial to take cognizance of actions of debt for sums not exceeding 200 rupees, which maximum is extended by Section 21, Regulation VII. of 1832, to 400 rupees.

3. Regulation VII. of 1832, rescinds all former Regulations, and is framed for the more effectual administration of justice, and of the police at the stations where military bazaars are established, and at certain other military stations, and in military forces in the field, as well as for the extension of the powers of courts martial. Laws and Regulations.

4. Memoranda for the constitution and guidance of courts of request, assembled under the provisions of 4 Geo. 4, c. 81, which are of general application to courts martial, held under the provisions of the native articles of war and Regulation of 1832, are contained in G. O. C. C. 10th February 1835, which cancel all previous orders on the subject.

5. A general order by the Commander-in-chief, 25 July 1835, authorizes the prosecution of suits by any person duly authorized by plaintiff, when sufficient cause is shown for his being unable to attend.

6. The above are the laws and regulations now in force, and upon these I proceed to report, with occasional reference to decisions by the Court of Sudder Udawlut, and to the other official documents now before me.

7. When troops are stationed within the Company's territories, and access can be had to the civil courts, to sue for debts beyond 400 rupees, as well as to appeal from decisions by punchayet, the assistance and protection of the law is within reach of the creditor, and his interests may be deemed sufficiently secure. Suits with Europeans for sums less than 400 rupees are generally of a simple description, such as arrears of or disputes about house rent, servants' wages, or similar affairs, of which, from the papers before me, it appears that holding out the alternative of a court of requests, generally produces a settlement between the parties. As, however, it is sometimes inevitable to convene such courts, I would urgently submit the necessity of empowering the convening officer to order revision whenever the proceedings or sentence should be defective or illegal, and should the court adhere to its original award, of their referring the case to ulterior authority. Courts within frontier. Necessity of supervision and revision.

8. In treating upon the subject of revision, I will here introduce the opinions given by the Sudder Udawlut, when the question had been brought under the consideration of that court. In an extract from its proceedings, dated 12th August 1834, it is stated that, "as regards civil suits, under Regulation VII. of 1832, whether decided by a court martial, by the officer in charge of police, or by a punchayet, their judgment requires no such approval" (*i. e.* of the commanding officers), "but section 33, in its first clause, expressly declares that they shall be carried into execution only under the orders of the commanding officers." Opinions of Sudder Udawlut on revision, and on the power vested in commanding officers.

9. "Under this provision the judges do not think that a commanding officer can at all interfere in the merits of a civil case, decided by these tribunals, or question the justice or otherwise of their judgments, or revise their proceedings, or modify their decisions"; but they are clearly of opinion, that where their judgments are palpably illegal, as where the case is not subject to their jurisdiction, or their judgment is at variance with any express enactment for their guidance, the commanding officer may decline giving orders for execution of their judgment, and that it was in order that he may exercise a supervision to this limited extent that this enactment was made; but want of regularity, or inattention to form, will not, in their opinion, justify any refusal to execute legal judgment; and all refusal must be at the personal responsibility of the officer declining to grant execution."

10. In a letter from the Court of Sudder Udawlut to the Secretary to Government in the Judicial Department, dated 5th December 1834, the second paragraph runs thus: "Upon the question, whether in the event of a refusal to execute the judgment of a military court of requests, on account of such judgment being at variance with some express enactment for the guidance of such courts, it is competent for the convening officers to send back such judgment for revision, or whether a new trial in such cases can by any military authority be granted, the judges are of opinion that, under the law as it now

No. III.–Part 1.
Military Courts of Request.

stands, the duties of convening officer are purely executive; that he may on his own responsibility refuse to execute, but that he cannot in any way interfere with the judgment, and can neither order a revision nor a new trial."

11. These opinions are reiterated in a letter to the Chief Secretary to Government, dated 9th September 1837, in its third paragraph, as follows:— "Under the opinion expressed by the court in their letter addressed to the Chief Secretary to Government, under date 5th December 1834, the commanding officer can neither order a revision nor a new trial, but the court itself may, like other courts, correct the error they have fallen into, and proceed to investigate the suit on its merits, and for this purpose it will be competent to the commanding officer to order the reassembly of the court."

An opinion of the Advocate-general on revision.

12. The Advocate-general having an opinion that courts of request for the adjustment of claims held under section 57, 4 Geo. 4, c. 81, were not liable to revision, did afterwards, on the 13th June 1836, communicate to government, for the information of the Commander-in-chief, that "no inferior courts, such as the military or civil courts of request, have any legal authority to award a new trial in any case which has been once heard and regularly adjudicated upon, under a surmise or suggestion that the judgment awarded was illegal. If indeed no trial at all has been regularly had, but a judgment awarded, without one of the parties having had his opportunity of being heard, through some irregularity or surprise practised, another trial may, in the exercise of sound discretion, be allowed by the convening officer, but not if there has been a hearing and judgment in due course. I was not aware of the system in the Bengal army to award new trials, or of this notorious practice of civil courts of requests; but I am of opinion such system and practice is illegal."

Extract of a Letter from the Adjutant-general of the army, regarding supervision.

13. In addition to these decisions of the Sudder Udawlut, I will adduce a circular letter from the Adjutant-general of the army, dated 14th February 1835, which, after conveying to officers commanding stations and cantonments the substance of the above opinions, concludes with these words: "I am further directed to inform you that the approval or disapproval of the convening officer is not to be affixed to the proceedings of such courts, neither are they to be sent for supervision to the deputies judge advocate-general of districts."

Observations on the Regulations, and the relative situations of commanding and commissariat officers.

14. From the preceding extracts, I would report, for your Excellency's consideration, that the situation of a commanding officer with respect to these courts must in general be unsatisfactory, and often embarrassing. By para. 3, Regulation VII. of 1832, police authority is vested in the officers commanding all stations designated as military bazaar stations, and paragraph 4 vests the immediate charge, which I presume to be the executive charge, of the police in the senior commissariat officer; the actual practice, however, is, that the executive duties are entrusted to the junior commissary, where there are two at a station, and he determines such suits as are within cognizance of the police. Imperfect linguists, inexperienced, and unaccustomed to native litigation, as these junior officers often are, their decisions are, by the opinion of the Sudder Udawlut on Clause 3, of Sec. 21, of Regulation VII. 1832, placed beyond the corrective power of an experienced commander, and this in cases of sufficient importance to involve to an imminent degree the personal security of all, and the pecuniary stability of a majority of the petty dealers and poor inhabitants of large military bazaars.

Difficulties of commanding officers.

15. The admitted power of a commanding officer to refuse execution, may indeed present an inert obstacle to the further progress of illegality or injustice; but as even this can only be exercised on a personal responsibility, it might be a question with some how far it should be incurred, when they are restricted from the use of active means of amendment. It might happen that an officer of high rank and experience would, to the utmost extent that a sense of duty permitted, shrink from or avoid the possibility of a collision, in which he should have to exhibit an unwilling exercise of his authority, to carry into effect the decisions of his subordinates, from which his better judgment might differ.

16. In the preceding paragraph I allude only to that opinion of the Sudder Udawlut, that the commanding officer, as head of the police, has no authority to interfere with, or amend the decisions of, the junior police officer, given under the provisions of Clause 3, Sec. 21, Regulation VII. of 1832, but to show the necessity of revision generally. I would here beg your Excellency's notice of the judgments pronounced in civil cases, which I have attached to this Report, in the Appendix lettered (A); and with reference to such decisions,

as

as well as to the restrictions placed upon the nominal head of the police, it is also to be considered whether, according to the spirit of the letter quoted in the 9th paragraph of this Report, it is competent to the commanding officer to prevent a case going to trial, whatever may be his opinion of its legality or its merits; to me it appears that he has but to order the assembly of the court martial in the requisition of his subordinate.

Regarding the constitution of courts for actions of debt.

17. The erroneous judgments that have sometimes been pronounced by military courts in civil causes may in a degree be attributed to the nature of their constitution. The members in general have no great predilection for a duty in which they feel but secondary professional interest, and, however unconsciously, they are often habitually affected towards the circumstances under which a member of their community, and perhaps a daily companion, appears as defendant against claims to which each of them may have been subjected with different degrees of justice; the debtors may sympathize with a person in his own situation, and it is not unnatural to imagine a bias in proportion to the integrity of an officer's personal transactions with litigious natives, whose dealings have imbued him with a prejudice against their fellows; a mind under the influence of inexperience taken advantage of, of carelessness overreached, and of the effect of attempts at fraud and exaction, whether successful or frustrated, may be liable to judge particular cases by general impressions, and thus frame decisions which savour more of intended equity perverted, than of the strict awards of justice inflexibly administered. The defendant appears before a court with the advantage of a language in common with his judges; he can plead his own cause with all the elaboration of argument; he can meet every objection with an explanation, nor does a comment pass with which he is unacquainted; the plaintiff, on the other hand, appears invidiously before the court, and is dependant upon an interpreter for a dry statement of his claims; he is unconscious of much that may be incidentally remarked against them, and his medium of communication may be ignorant of the very points which, if urged with propriety, would secure the issue of the cause. Such considerations as these appear to show how indispensably necessary is the check of a deliberate and impartial supervision of the proceedings of every court of which European officers are constituents.

That which is meant for equity may fall short of justice.

Comparative advantage of Europeans and natives before courts.

Suggested alteration of Clause 1, Sect. 33, Reg. VII. 1832.

18. I shall conclude my observations with reference to cases within the Company's territories by suggesting a modification of Clause 1, Section 33, Regulation VII. of 1832, so as to permit of a more summary attachment of property to meet the awards of courts martial and punchayets; for when a cause is decided, the long period of 40 days, which is allowed to elapse before execution follows judgment, affords too much time for the fraudulent debtor to remove or conceal his personal property; and I would also suggest that houses, shops, or buildings registered under the provisions of Section 5, of Regulation VII. 1832, should be rendered liable for the liquidation of debts legally decreed to be due, and that all real property situated on ground granted by government for the use of the troops or their followers in cantonments and military stations, should in like manner be liable to seizure in satisfaction of awards by military courts and punchayets.

Stations beyond the frontier.

19. There are four large military cantonments beyond the Madras frontiers, viz. Bangalore, in Mysore, Sekunderabad and Jaulnah, in the Nizam's dominions, and Kamptee, near Nagpoor, besides some posts with single corps.

Lowest numbers of their population.

At Bangalore, Sekunderabad, and Kamptee, the civil population of each may, with sufficient accuracy for the purpose of this Report, be taken at the probably low estimate of 40,000 inhabitants, and at Jaulnah the number may be decreased to about 25,000. In these populations are comprised many merchants and Sahoukars of wealth and respectability, who have extensive business transactions with all parts of India; they are of different countries, and at the advance stations will be found generally to consist of Mawarees, Mahrattas, Zelingees, and such people from Madras and Southern India as have followed our camps.

Description of population.

In consequence of the letter from Mr. Secretary Macnaghten, dated Fort William, 30 January 1837, and addressed to the Chief Secretary to Government at Madras, Section 42, Regulation VII. of 1832, was made applicable to suits for the right or possession of land or other real property arising within cantonments situate beyond the frontiers, and the correspondence in the Political Department with the residents at Hyderabad and Nagpoor settled the question of the subjects of those states being amenable to our civil and criminal jurisdiction,

Sec. 42, Reg. VII. 1832, now applicable.

Subjects of Hyderabad and Nagpoor, when amenable to British jurisdiction.

diction, whenever they reside within the British cantonments. At Bangalore a different system appears to have existed since 1813, regarding which I have copied a memorandum of report drawn up by the officer entrusted with judicial power, and an explanatory letter lately received. These are annexed in Appendix (B.), and regarding them, I beg to report, that on the 8th February 1813, the British resident at Mysore forwarded to the Madras government a sunud from the Rajah of Mysore, empowering Captain Cubbon, the commissariat officer, and his successors, to decide all causes of a minor description within the cantonment of Bangalore, but to refer civil suits above 500 pagodas (1,750 rupees) and cases of murder to the fouzdar of the Rajah.

Regarding Bangalore in Mysore.

Power vested in British subordinates by the Rajah.

Apparent anomaly.

It appears to me to be an anomaly to apply to a foreign power to grant authority for an inferior British officer in an English army to exercise a power of jurisdiction, I believe unprecedented under British administration, over British subjects, for whom and whose circumstances our own Government has framed laws, which are in force at all other stations beyond the frontier; nor am I aware how far any judicial act of a British officer contravening those laws of his own Government which are framed under the paramount authority of Parliament, could be borne out in a supreme court of justice. A more vague warrant than the undated sunud of the Rajah of Mysore can hardly be imagined, and it appears only necessary to refer to Appendix (B.) to show the danger of allowing British subjects to be placed under such administration, which, however reported to work so well, that "it may be questioned whether any other could be introduced more calculated to afford protection and satisfaction to the community, or advantage in every way to the public interests," is at the same time admitted to require sometimes an appeal to those British enactments which it in general totally supersedes. Admitting, however, that the system may have hitherto been attended with results as perfect as reported in the Appendix, it is but necessary to submit to your Excellency's consideration, that if in future years the commissariat officer should be either inexperienced or otherwise incompetent to wield such extensive powers, the same happy effects could hardly be expected.

Doubts regarding jurisdiction exercised over British subjects by British officers under foreign authority.

Which grants power not accordant with our enactments.

Possible disadvantages.

Doubts as to existing arrangements.

Since the sunud was granted in 1813, the authority of the Rajah has been placed in abeyance, and the government of the country placed under a British Commission; but though this must have nullified his other acts, it does not appear to affect the sunud, nor to have provided any more than that did for the line of Captain Cubbon's successors being broken by any arrangement of our Government; nor am I aware whether the power delegated to the Commission differs with respect to British subjects from that which was exercised when a civil interference existed at Hyderabad and Nagpoor, but exercised only over the subjects of those states.

Amount of sums for which suits have been brought within the last five years at Sekunderabad.

At Sekunderabad the number of cases and the amount of property adjudicated upon within the last five years are as follows:—

125 punchayets, held from March 1833 to March 1838, awarded sums amounting to - - -	*Rs.*	65,143	5 8
Amount sued for - - - - - - -		89,826	5 8
51 courts martial, held under Sec. 42, Regulation VII. of 1832, awarded sums amounting to -		83,100	9 –
Amount sued for - - - - - - -		2,05,053	– –
The highest sum submitted to arbitration by punchayet was - - - - - - -		25,697	9 6
And by court martial - - - - -		42,667	3 3

There have been only two appeals from punchayets to courts martial during these years.

At Jaulnah.

The records connected with courts of request having been removed from Jaulnah in 1834, and not being at present accessible, I have only been enabled to obtain the number of cases adjudicated by punchayets, from the 1st May 1836 to 20th April 1838, which are 135, and the sums awarded amounting to *Rs.* 11,615. 13. 6.

At Kamptee.

At Kamptee, the number of cases and the amount of property sued for and adjudicated upon within the last five years are as follows:

1,088 Courts of request (European and native):			
Property sued for, amounting to - -	*Rs.*	91,946	13 1
Property awarded - - - - - -		65,994	9 11

38	Courts martial held under Section 42, Regulation VII. of 1832: Amount sued for - -	*Rs.*	53,745	7	11
	Amount awarded - - - - - -		34,440	9	–
24	Punchayets: Amount sued for - - - -		20,447	12	–
	Ditto - ditto awarded - - - -		10,787	12	6
5	Appeals.				

Importance of tribunals.

The sums which have been adjudicated upon show the importance of the tribunals before which causes must be brought; and what has been before observed with regard to the supervision necessary for courts composed of European officers, applies with particular force beyond the frontier, when it is considered how very rarely any of them are acquainted with the forms or customs of native business, or of the languages in which most of the books and accounts are kept. Nothing but practice upon courts martial in civil cases can give them the requisite knowledge, and this practice must of necessity be slowly, if ever attained, by the opportunities afforded by the rolster. Native officers again, whatever advantage they may have, so far as a knowledge of language is concerned, are otherwise less competent to these duties than are the better educated and more comprehensive-minded Europeans. It will be but in a small minority of cases that the native officer of this army will be found to understand the dialects of commercial transactions. I proceed to offer some suggestions for your Excellency's consideration: in the event of plaintiff or defendant not appearing, it might be advisable in the former case to enter a nonsuit, unless sufficient cause for non-appearance can be shown; should a defendant absent himself without good cause shown for his absence, that a decree be given in favour of plaintiff, and after due time allowed, execution entered on.

Suggestions.

Evidence to be procured from a distant place.

It being often necessary to procure evidence from witnesses at a distance, this might be rendered admissible, or written interrogatories, according to the mode prescribed by Government.

Suggestions.

One party being sworn, it might with reference to Go. C. C. 10th February 1835, be advisable to allow the other party to be put on oath at his own request.

The court should summon witnesses, and for this purpose an interval might be allowed between the time of the suit being preferred and the day of calling it on for trial.

It should be expressly defined that, where a plaintiff holds several promissory notes or bonds, payable at different periods, he may sue for each separately, provided it be within the limited amount. Should debt to one person be due on two accounts, viz. for money lent, and for goods furnished, or articles sold, then may the plaintiff sue for each separately without having the accounts amalgamated to make up the prescribed limit of adjudication. It is desirable that the manner of carrying decrees into effect should be distinctly laid down, and provision made for stoppages of pay in liquidation of decrees when a regiment passes into another range of payment.

The limited time within which actions can be brought before native courts should be defined more exactly than it is at present.

Interest of money.

Twelve per cent. per annum is the utmost interest now recognised. Considering the fluctuating value of money, and the well-known means taken to evade the letter of this established rate, it might be advisable to permit parties to appear before the police magisterial authorities, and in presence of witnesses on both sides, agree to give such interest as might be equivalent to the value of money at the time, the interest agreed upon to be legally recoverable on bond or tumassook. Money now obtains its value by means of "senvaee," and other transactions, which give a fraudulent appearance to business that in reality is fair, and would, if unshackled, be without the appearance of dishonesty.

Goods mortgaged or in pawn.

Goods mortgaged or in pawn are not seizable; it might be permitted that the owners should be advertised to redeem them by a certain time after judgment against defendant, who is the holder, and failing their being redeemed that they should then be publicly sold by auction, and any amount surplus to the liquidation of sums lent on them, should be payable to the owners.

Cross bills.

If defendant has an account against plaintiff it might be allowable for him to enter a cross bill immediately upon receiving notice of action; both suits might

No. III.–Part I.
Military Courts of Request.

be entertained, and judgment given for the sum demanded or balance due, according to circumstances.

Crying down credit.

On the 11th November 1834, it was decided that the restrictive provisions of G. O. G. 30th October 1819, were only applicable to regimental bazaars, and that credit cannot be cried down in sudder bazaars. This places the regimental bazaar at a manifest disadvantage, and the shopkeepers in the dilemma of losing a large proportion of their customers, in consequence of the accommodation that can safely be afforded by dealers in the sudder bazaar, within perhaps a few hundred yards of them; or of securing the custom at the risk of disobedience of orders and the uncertainty of recovering their dues. Every difficulty in the way of obtaining payment of a debt, or the full value that money can command, drives capitalists and traders to subterfuge and evasion, and ultimately is compensated at the expense of the debtor, if he can by any means be made to pay, and if payment cannot be exacted, the alternative is loss, perhaps ruin, to the creditor, or he must be reimbursed by an enhancement of his transactions at the cost of the fair dealer. I would suggest that credit might be cried down at every bazaar within military limits.

Punchayets.

Acceptable as is the theory of punchayet jurisdiction, there are practical evils in the system, regarding which I would beg to submit a few observations.

Possible effects of blended duties on the minds of members of punchayets.

In the military bazaars the magisterial authority is so intimately blended with the interests and views of the department involved in all the commercial transactions and contracts connected with the supplies and extensive pecuniary disbursements of government, that, taking into consideration the well-known and generally-admitted failings of native character, it is hardly within reasonable expectation to find the necessary judicial independence in members of a punchayet, when it is apparent to their imaginations that they have to decide in opposition to interests with which it is difficult for them not to identify the ruling authority. The impossibility of bringing a man of high caste to sit in punchayet with the pariah classes operates to the disadvantage of the latter,

Difficulties in punchayets.

upon whom it becomes necessary to induce members of caste to espouse their causes, and who, after all, may more than possibly be imbued with prejudices detrimental to their clients. A man of high character and known integrity will be so much sought as member of a punchayet, that his time, if given up as required, would be lost to the conducting of his own affairs. Such a person is also too often obnoxious to the ill feelings of those against whom he may have decided, and this is a consideration which I have known to press upon a person of the character now considered, and whose interest was of course to conciliate in aid of his commercial transactions.

If plaintiff and defendant cannot agree to a punchayet chosen by the sirkar, suggests that the court be increased to seven members.

A punchayet consisting of five members has two chosen by each party, and the fifth by the sirkar. I would suggest that the court should always consist of seven members, four to be chosen as at present, and three by the convening authority. As now constituted, each litigant names what are in reality two advocates, who sit avowedly to carry through their client's cause; the fifth member having the casting vote, and being the only presumed impartial person, is virtually the arbitrator. For reference to a court martial, on an appeal against partiality, the appellant may be sure of two out of five to support his appeal to an European court, before which whatever may be gained by the independence and integrity of the judges, is met by the inconvenience to which plaintiff and defendant are both subjected from the difficulties the officers must feel in their endeavours to adjudicate upon the intricacies of transactions, and settlements of accounts, with which it is, as I have before stated, almost impossible for them to be acquainted, and in which they are incomparably less conversant than the members of a punchayet; with seven members a punchayet would always be able to command a majority by means of members without apparent interest in the cause.

Allusion to possible advantage of separating magisterial duties from extensive commercial transactions.

Withdrawing men from their business, if frequently resorted to, renders membership of a punchayet a very heavy tax. I hope it is not going beyond what is expected from this Report to advert distantly and respectfully to the probable advantage of having magisterial authority perfectly independent of departmental interests and duties; and it might then be not unworthy of consideration whether a superintendent of police, acting on well-defined laws, under the orders of the supreme military authority, might not be assisted in civil adjudication by two judicial assessors on fixed salaries. All suits referred to a tribunal composed of these authorities to be subject to a small per-centage

Judicial assessors.

charge,

charge, which, with fines to be exacted upon clear proof of fraudulent appeals, might be carried to the credit of government as an off-set, if not a repayment for the fixed and independent salaries of the assessors. It may be presumed that some arrangement of this kind would be acceptable to those whose security would be so much the greater; and where suits arise in which the public interests were at all implicated, it would be satisfactory to the government and to its subjects to have them decided where the strongest advocacy which departmental zeal might educe could not be mistaken for *ex parte* prepossession in favour of the important duties confided to an officer in one situation against which he might have to decide objections in another.

Imprisonment in the field.

With reference to Sect. 33, Regulation VII. of 1832, I have to submit whether its provisions are the best that may be applied to ultra frontier stations, and particularly to the bazaars of large forces in the field, where imprisonment must be inconvenient, and the more so in proportion to its period. If troops are stationary, a fraudulent debtor, having concealed his property, may undergo two months' imprisonment, with the knowledge that his creditor is unable or unwilling to bear the expense of his support in a civil gaol, even if there were ready means of sending him to one. When troops are in the field, the possibility of doing so would rarely occur, and I doubt whether there has ever been an instance of such transmission from beyond the frontier.

Facility of fraud.

All contracts to be written in the languages of contracting parties.

All contracts and agreements for value to be received between Europeans and natives, should be written in the languages of both parties.

Improvement of the judicial system would advantageously compensate ad valorem assessments of land in military cantonments, not within regimental limits.

In the event of an amelioration of the present system of civil adjudication in military bazaars, a fund might very advantageously be raised to defray the expense by an assessment on the land now granted gratuitously in the sudder bazaar. Regimental bazaars could not bear this assessment, nor would it be according to the spirit in which regimental ground is given; but a moderate tax might be laid on in proportion to the convenience of location in the vicinity of the markets, or for commercial purposes. In many, and I believe in most cantonments, large tracts are required by commissariat writers and other public servants, which are cultivated for private use. If such appropriation of ground within military limits be not altogether objectionable, and should it not be deemed advisable, on account of general salubrity, and for other reasons, to forbid all cultivation except in the compounds attached to bungalows, then might these grounds be fairly liable to a land-tax; and that, in addition to what would be raised from the householders in the sudder bazaar and elsewhere, not within regimental limits, might be applied to render residence in military cantonments and ultra-frontier stations more secure and desirable than it now is, with the acknowledged advantages at present allowed.

In conclusion, I beg to explain to your Excellency that the delay which has occurred in drawing up this report has been occasioned by the necessity of applying to officers commanding stations for information on the working of the present system, and that the last communication on the subject only reached me a few days ago.

I have, &c.
(signed) *R. Alexander*,
Judge Advocate-general.

Judge Advocate-general's Office,
Head-Quarters, Bangalore,
13 August 1838.

Appendix (A.)

Legis. Cons. 12 August 1839. No. 23. Enclosure.

Case 1.—*A.* as agent on behalf of *B.* sowcar at Kamptee, versus *Captain C.*, for Nagpoor rupees 428. This suit originated in a protested order for Nagpoor rupees 374, with interest thereupon at the rate of 12 per cent. per annum, deducting what was necessary to bring the amount within cognizance of military courts of request. The protested note was produced before the court, and evidence tendered in support of the claim for interest, but declined by the court. The defendant admitted the principal, but demurred to the charge of interest, on the plea that when he granted the order to the sowcar's agent, the latter was distinctly informed that the amount would be paid only after all his (the defendant's) other creditors at Kamptee should have been paid; and in support of this plea the vakeel of the regiment was called, who swore to the circumstances. The court awarded the amount of principal without interest; and directed that the same "be paid after the claims of all the defendant's creditors at Kamptee shall be satisfied."

No. III.–Part 1. Military Courts of Request.

The demand against the defendant in this suit was brought to the notice of the superintendent of police at Kamptee about the 6th of March 1835, the debt having been then of long standing, and defendant having failed in repeated promises. Defendant was called upon for reply, with an intimation from the superintendent that, as the regiment was about to march from the station, and some difficulty might exist in paying the full amount, if he would specify any monthly instalment that he could conveniently afford, and pledge himself for its regular remittance, he (the superintendent) would endeavour to procure complainant's consent to the arrangement. Defendant declined this, and expressed great indignation at the complaint having been preferred against him, alleging that he had informed the sowcar that he intended settling with him before quitting the station, and that such was still his intention. The regiment marched three days afterwards, and the day following complainant again appeared at the police-office, and stated that he had remained at defendant's quarters the whole of the preceding day and night, and accompanied the regiment to its first stage, but had failed in obtaining any settlement of his account. The foregoing particulars were communicated to the officer commanding the regiment, with an intimation that unless an immediate satisfactory arrangement was entered into, the matter would be submitted to superior authority. Defendant then gave an order upon Messrs. Cursetjee & Co. for the amount due, to be paid from proceeds of certain articles left in their hands for sale. This order was given to the sowcar himself, and not to his agent, and he supposed it to be an order for immediate payment. On presentation, Messrs. C. & Co. declined accepting, on the ground that the articles in question were estimated at prices which precluded the probability of sale, and that if sold by auction, the proceeds would not suffice to cover the amount due. The articles remaining on hand for some months without any offer, a communication was made to the defendant to authorize their sale by auction, or to provide otherwise for payment of the unaccepted order. He declined both propositions. In September 1835, the order was protested by Messrs. C. & Co. Repeated official communications were made to defendant without eliciting any satisfactory reply, and in August 1836 the matter was referred to a court of requests. The other creditors at Kamptee had been arranged with by assignments on the proceeds from sale of house. The plaintiff's claim was omitted in that arrangement, because defendant had promised that he should be settled with before quitting the station. The award of the court in this case was not confirmed by the commanding officer of the force. The foregoing facts having been brought to his notice, the defendant was called upon to enter into an immediate arrangement for liquidation of the amount due, with interest thereupon, or abide the result of a reference to army head-quarters. He acceded to the proposition, entered into an arrangement by monthly instalments, but dying insolvent a few months afterwards, it is presumed the greater part of the debt remains unpaid.

Case 2.—*A. B.* versus *Lieut. C. D.*, for Hyderabad rupees 13. Plaintiff engaged with the defendant for the repair and painting of a bullock coach, for which he was to receive 25 rupees. Two months after the work had been completed, defendant paid him 12 rupees, and having failed in repeated promises, this suit was instituted for recovery of the balance. Defendant declined payment on the plea that one of the springs repaired by plaintiff had broken, and that, pursuant to agreement, plaintiff was to warrant the same for 12 months. In support of this plea defendant handed in an agreement written in the English language, and purporting to bear plaintiff's signature, of which the following is transcript:—

"I promise to repair —— carriage properly, and warrant the springs to keep good for one year, in default of which I will return the money he has given me for repairing the same.

Witness, *Bulling*, as signature.
Pedulnas signature.

Plaintiff admits his mark to the document, but pleads, first, that he merely engaged, in the event of the springs breaking, to repair the same for nothing; and secondly, that the broken spring was not one of those repaired by him. Two servants of defendant, on leading questions being put to them, supported his statement as to the identity of the broken spring. Defendant admits that on two occasions he drove his bullock coach on rough roads, across the country, to some distance from cantonment. The following is the court's award:—

"According to the strict letter of the appended agreement, the plaintiff should lose the whole of the sum he claims, but from certain answers given by plaintiff to questions from the court, it appears that he did not rightly understand its tenor; under this consideration the court awards that eight rupees be deducted from the claim of 13 rupees, and the defendant pay the plaintiff the balance of five rupees."

Case 3.—*A. B.* versus *Lieut. R. S.*, for Hyderabad rupees 45. 2. This action was brought for tailor's work performed by plaintiff and his brother. Defendant being asked if he admitted the claim, replied in the affirmative, to the amount of rupees 31. 10. Plaintiff's brother being called, deposed generally to work performed, but without any special reference to the amount claimed, nor is he questioned thereupon. It is then recorded, that the plaintiff having no further evidence, and the court not being satisfied with that adduced, put the defendant upon his oath. In specifying the items admitted, and those objected to by him, defendant makes out a balance due to plaintiff of 26 rupees and two annas only; alleging at the same time that he considered some of the smaller items of the bill exorbitant, but would leave that point to the court itself. The following is the court's award:—

"That

"That the plaintiff has not substantiated his claim to rupees 45. 2. and therefore award that defendant do pay to plaintiff the sum of rupees 26. 10. which appears to the court to be due; and as the court also consider the plaintiff to have been actuated by fraudulent motives in his proceedings, it decrees the said sum of rupees 26. 10. to be paid in small instalments of five rupees monthly, as a sort of punishment to deter him from future delinquency."

The amount awarded by the court neither accords with the first statement nor subsequent deposition upon oath of the defendant. Its finding of fraud against the plaintiff is not warranted by the recorded evidence, while the discrepance between the defendant's statement in reply, and subsequent deposition upon oath, should have induced caution in admitting his unsupported evidence in his own behalf. It does not appear that the defendant's deposition was explained to the plaintiff, or the opportunity afforded him for reply. In a correspondence with the superintendent of police, before the matter was referred to a court of requests, defendant had objected to the account, on two grounds, that it included bills due to two persons, and that in one of those bills items were erroneously included for articles supplied by himself. Defendant tacitly admitted the sum of rupees 25. 6. as due to plaintiff, and the items objected to in the other bill amounted to rupees 2. 12. only. The bills conjointly amounting to rupees 45. 2. the defendant's admission upon the two bills must be considered good for rupees 42. 6. It was explained that the lesser bill was due to plaintiff's brother, who had transferred the same to plaintiff for recovery, an arrangement not unusual or objectionable. Defendant would appear to have admitted this explanation, since the objection was not renewed before the court. The items objected to were for hooks-and-eyes, and a pair of wings. It was explained that the charge of one rupee was for altering the wings, and not for the materials. And plaintiff positively affirmed that the hooks-and-eyes were purchased by himself in the bazaar.

Case 4.—*C. D. and* 16 *Bearers* versus *Captain A. B.*, for 90 rupees, balance alleged due for one month, and 20 days' pay, at the rate of six rupees each bearer, and seven rupees the head bearer, per mensem. Plaintiff, on behalf of self and bearers, states that 10 days before the march of the regiment from Bangalore, they were entertained by the defendant, Captain ——, at the rate indicated, with the understanding that if they behaved well they would be continued in his service after the arrival of the corps at Secunderabad. Three witnesses, having no apparent interest in the issue, distinctly swear that the rate of hire agreed upon between plaintiffs and an orderly trooper was seven rupees per mensem for the head bearer, and six rupees each per mensem for the remainder. One of those witnesses further deposes to the fact of their having been informed by the trooper that if they behaved well during the march they would be continued in the Captain's service, after their arrival at Secunderabad. Defendant disputes the claim *in toto*, alleging that the bearers were hired for six rupees each bearer by the trip, not by monthly hire, and that they had received their full due. In support of this averment an agreement, written in the English language, and purporting to bear the mark of the head bearer, was produced in court. Defendant admitted that the agreement was entered into some days before the regiment quitted Bangalore, and that the plaintiffs then took up their residence in his compound, but states that this was for their own comfort and convenience, and that when employed by him at Bangalore they were paid extra. An orderly trooper appears as witness for defence, and being asked if he was present when an agreement was made with the plaintiff, replies, "Yes, I was; the agreement was six rupees a head for the trip, not monthly, and a present afterwards, should they conduct themselves well. It was understood that the head bearer would get something more than the rest if he behaved well." Being shown the written document, he recognizes it and says, "this was signed by the plaintiff and the contents well explained to him in the presence, and by order of Captain ——, the other bearers being present." Being asked whether the bearers were in defendant's monthly pay previous to the march of the regiment, replies "No, they were not; Captain —— invited them to put in the compound until the march, there being plenty of shade and water there." There was no further evidence for defence. Plaintiff admits his mark upon the document, but states that he understood the engagement to be for monthly hire, and such was the impression of the other bearers also. Admits also, that on three occasions wherein eight of the number were employed in carrying, money was given them, half a rupee on one occasion, and one rupee on the other two; but they considered this as a present, and when the eight bearers were thus engaged, the remainder were employed about the house. The court awarded 26 rupees, but upon what principle does not appear. The regulated hire per trip from Bangalore to Secunderabad is rupees 8. 12. 6. each bearer. Bearers are in the habit of hiring per trip with individuals proceeding alone from one station to another, full sets being employed, and the march usually performed in less time than prescribed by Regulation. But they are generally averse to trip-hire with regiments, the time occupied being so much greater. The ordinary pay for bearers when marching is seven rupees each per mensem, and one rupee extra to the head bearer. The bearers and other equipments were detained subsequent to the arrival of the regiment at Secunderabad for 18 days before these suits were determined, and the amount of award realized.

Case 5.—*A. B. Butler* versus *Lieutenant A. P.*, for rupees 35. 8. on account of wages and current expenses. Defendant admits to the extent of rupees 11. 2. which was tendered to plaintiff on discharge, but declined by him. Defendant objects to the remainder, because, including interest on monies alleged to have been borrowed from a skroff for current expenses, whereas he has been in the habit of settling accounts daily; he objects also to the difference between butler's and maty's pay for four days, during which the plaintiff

No. III.–Part 1.
Military Courts of Request.

was absent on occasion of the Mohurrum, finding a maty only as substitute; and he objects further to two items in the account, which he alleges were paid for some time before. Defendant's cook is called, who deposes to the fact of his master being in the habit of settling his accounts daily: no further evidence for defence. The court awards rupees 11. 2 as. admitted by defendant. The plaintiff, when apprised of this decision, appealed strongly against it, alleging that the cook had sworn falsely, and that his own witness was refused a hearing. On reference to the record of proceedings, the following entry is found:—

Question by the court to the plaintiff. "Did your master authorise you to borrow money on interest, and have you any proof?—*Answer.* Yes, I was authorised, but I have no witness to prove it."

The plaintiff having no evidence to produce in court, the defendant is called upon to state his case.

Yet on subsequent inquiry it appeared that the sowcar was actually called by plaintiff, and questioned (not on oath) as to whether defendant had authorised his advancing money on interest, and on his replying in the negative, his evidence was deemed inadmissible.

Case 6.—At a military court of requests, held at Cannonore, in October 1836, the court, passing by a note of hand for 200 rupees, granted to the plaintiff, a Parsee shopkeeper, by the defendant, a military officer, decreed that a buggy, which, after having been used during the five months had been broken and repaired, should be taken back by the plaintiff in liquidation of his claim, such claim being for the price of the same buggy (together with a harness not mentioned in the decision) originally purchased by the defendants, in adjustment of which the note of hand had been granted.

Case 7.—At Kamptee, in February 1833, a native court of requests gave an award against the defendant, decreeing that the sum sued for should be placed at the disposal of the officer commanding the force, and destroyed the plaintiff's bond.

Case 8.—In February 1838 Subsook sued Gopaul, at Kamptee, for recovery of 101 rupees 6 annas, due on a bond. Gopaul produced two witnesses that he had paid the money, and had met plaintiff's convenience by accepting a promise that the bond should be returned, Subsook asserting that the said bond was with his other papers at Nagpoor. Subsequent applications by Gopaul were met by evasions on the part of Subsook, until the latter preferred a claim for payment of the bond in question, and the claim was referred to a court of requests.

Subsook brought in support of his claim two witnesses, one of whom was rejected by the court of requests. Gopaul produced the two witnesses who saw the money adjusted, and heard the promise given to return the bond, these witnesses having also persuaded Gopaul to accept the promise of its being returned, on the strength of their knowledge of the payment having been made in their presence.

Gopaul offered to prove the perjury of Subsook and his witnesses, but was not allowed to do so by the court, which decided in favour of plaintiff. He, Gopaul, lodged his complaint against his opponents, who were tried by a court martial, and convicted on the clearest evidence of perjury and subornation of perjury.

(signed) *R. Alexander,*
Judge Advocate-general.

Appendix (B.)

Memorandum.

Legis. Cons. 12 August 1839. No. 24. Enclosure.

Previous to the early part of the year 1813, the police authority in the fortress and cantonment of Bangalore was vested in the hands of the native authorities of the Mysore government residing in the Pettah, whose duty it was to take cognizance of all offences committed in the cantonment. The abkary department was also entirely under the control of the same authority. Opportunities were thus afforded to the European soldiery to procure spirituous liquors to excess, whereby the health and discipline of the troops were seriously endangered. To remedy evils of such magnitude it was suggested to his Highness the Rajah, by the Madras government, in the secretary's letter to the British Resident at Mysore, bearing date 1811, that the entire police authority and conduct of the bazaars should be transferred to the commissariat, with a view to the establishment of a military bazaar. In reply, the Resident, in his letter bearing date 7 January 1812, intimates the Rajah's concurrence in the measure of placing the abkary (being the only department in which abuses were found to exist) under the superintendence of the commissariat, but urgently solicits the Madras government not to insist on the measure of taking the whole bazaar from under the authority of his Highness, which point was conceded accordingly; and, in the first instance, the authority of the commissariat officer was confined to the superintendent of the abkary department, on intimating determination of the Madras government to accede to the Rajah's wishes respecting his retaining the bazaars under his own authority.

The following passage occurs in the Chief Secretary's letter to the British Resident, bearing date 31 March 1812:

"The Governor in Council, however, continues anxious that the entire police of the bazaars in the fort and cantonment of Bangalore, but particularly in the latter, may be placed under the

the superintendence of the commissariat, if that arrangement can be effected with the perfect concurrence of the Rajah, and without detriment to the rights and interests of his Highness's government."

In furtherance of this object the Madras government again addressed the British Resident, on the 15th December 1812, urging the necessity of placing the superintendence of the general police of the cantonment and fortress of Bangalore in the commissariat officer, to be exercised under the authority of his Highness the Rajah of Mysore, and requesting him to endeavour to obtain the Rajah's acquiescence in the proposed arrangements:—That the police establishment had continued to be paid by, and remain under the immediate and exclusive authority of the commissariat officer, who is to be considered master of police, and the only authority for the arrangement of the police within the limits of the cantonment and fortress of Bangalore.

In continuation, the Madras government remark, "As it appears that the powers necessary for carrying the desired arrangement into execution cannot be conferred by this government, but must originate from his Highness the Rajah of Mysore, it is the desire of the Honourable the Governor in Council that you will explain to his Highness the nature of that arrangement; and, that in the event of its meeting with his acquiescence, you will apply to him for a written order under his seal and signature, applicable to the successive officers in charge, directing them to distribute justice, and punish all crimes and disorders within the cantonment according to their discretion. This order, when procured, will be transmitted through you to this government, and will constitute the authority on which those officers will act."

The British Resident in his reply, dated 8th February 1813, to the Chief Secretary's letter above quoted, states:

Extract.—"I do myself the pleasure to forward the Rajah's authority under his seal and signature, delegating to the officer in charge of the police department at Bangalore, the right of punishing all disorderly conduct, at his discretion; and I beg you will inform the Honourable the Governor in Council that his Highness will accede to his wish generally, as expressed in your letter, for the better administration of the police department in the cantonment and fort at that station."

The original document thus forwarded was retained in the Chief Secretary's office, and is the authority on which the superintendent of police, up to this period, has acted.

The following is a Copy of a Translation of the Sunnud.

"Regulations by His Highness Kishen Rajah Wadier, for Fort and Cantonment of Bangalore, for the Guidance of Captain Cubbon and his Successors.

"As it would occasion delay in the inquiry and punishment of offences, and in the administration of justice, to transmit daily accounts to the presence and wait for instructions from Mysore, Captain Cubbon is hereby authorized to examine and settle disputes and quarrels, and to punish offences according to their nature, and agreeably to his own judgment.

"Captain Cubbon being placed at the head of the police cutchery at Bangalore, will inquire into and punish all trifling offences committed within the fort and cantonment of —— as above specified; but all great offences, viz. robberies of sums above 500 pagodas, and murders, and suits for sums of the same amount among persons who may be without service or employment of any kind, or amongst merchants, or any sellers of goods, all such offences to be stated to the fouzdar, who will report the same to the presence for further instructions. Should the troops be removed from Bangalore, the police cutchery to be considered unnecessary."

(A true translation.)

(signed) *H. H. Cole,* British Resident.

(True copy.)

(signed) *W. Thackery,*
Chief Secretary to Government.

From the extract of correspondence above referred to, it will be perceived that while the Madras government was anxious to introduce a more efficient police for the purpose of checking as much as possible the use of deleterious spirits amongst the troops, they were most zealous to guard the rights and interests of the Mysore government, and that although the police, together with the control of the bazaars of the fort and cantonment, was placed under the superintendence of a British officer, his authority was derived from the Rajah. The profits on the sale of arrack were forwarded monthly to the fouzdar of Bangalore, which officer likewise continued to realise the bazaar duties as heretofore.

The subjoined extract from cantonment standing orders, by Colonel Marriott, dated 17 March 1817, succinctly but clearly defines the duties of the superintendent of police, and the description of persons amenable to his authority:

Extract.—"The commission under the seal and signature of his Highness the Rajah, bearing date 11th February 1813, grants the fullest powers for the punishment of all

No. III.–Part 1.
Military Courts of Request.

offences except murders and robberies above the sum of (500) five hundred pagodas, and for the final decision of all civil suits under the sum of 500 pagodas.

"Every person committing offences within the above limits* is amenable to seizure, search, summary zeal, and no exemption can be allowed by the offender pleading his being in the public or private service of any European officer, corps, or department."

*The fort and cantonment.

Having thus traced the origin and nature of the authority of the superintendent of police, it may be necessary briefly to explain the mode which has obtained in the administration of justice.

In all complaints for debt, and of a purely civil nature, against any person whatever actually borne on the returns of regiments or departments, and drawing military pay, the complaint is usually, in the first instance, referred to the officer commanding the regiment or head of the department to which the individual belongs, for redress. In the event of this officer being unable satisfactorily to adjust the complaint, it is directed that he shall intimate the same to the superintendent of police, by whom it is then inquired into; and in cases not requiring a reference to the officer commanding the cantonment, a decree is awarded by the superintendent of police, or referred to a punchayet assembled under his authority; in either case, should the defendant object to the sentence, the subject is referred to the cantonment commandant, who then issues the requisite instructions to enforce the decree, or convenes a court martial requests in virtue of the authority vested in him by Act VII. Sec. 12 of the articles of war.

Very few instances, however, are on record in which it has been necessary to assemble a court martial of this nature.

The only difficulty that has ever occurred in adjudicating any civil or criminal matter is in former cases, when the defendant being of the military class abovementioned, and the amount of the suit has exceeded rupees 400, beyond which sum no suit can be determined by the articles of war, or any other Regulation of the British Government that would appear to be considered applicable to the cantonment of Bangalore. However, in a late case, which exceeded the limited sum, it has been determined by the Madras government, that the sentence of a punchayet, assembled by the superintendent of police, in accordance to the spirit and intention of the late Bazaar Regulations of 1821, appearing just and proper, should be enforced, which has been done accordingly, the defendant having readily submitted to the award of the sircar punchayet, so soon as he became aware there existed the authority to enforce it.

Soohje Bhye *versus* Annajee Row, havildar 7th regt. L. C., for rupees, 447. 12.

In all criminal cases preferred at the police office, in which the same description of persons are defendants, evidence of prosecution is recorded by the superintendent of police, and submitted with a statement of the transactions to the officer commanding at Bangalore, who, in the event of its appearing sufficiently conclusive against the accused, resorts to such steps as he may deem expedient to bring the party to justice before a military tribunal.

In all civil and criminal cases all other persons whatever, residing within the cantonment (excepting such as are borne on the strength of regiments, or actually drawing military pay), are amenable to the authority of the superintendent of police, by virtue of his warrant from his Highness the Rajah of Mysore, and subject to summary trial on such warrant.

Doubts have arisen as to whether clauses 41 and 42 of the new Bazaar Regulations of 1832, are applicable to this cantonment.

By section 41, of the new Bazaar Regulations of 1832, at all stations beyond the frontier, and in all detachments in the field beyond the frontier, the officer in charge of the general camp or field detachment bazaar is vested with authority to decide and determine suits, &c. under the amount of 20 rupees, provided the defendant at the time the cause of action arose, and the institution of the suit, belonged to any of the military classes specified in section 13 of the same Regulations, to avoid the necessity of reference inserted in the margin.*

The above section apparently applies only to such stations at which the bazaars are under the authority of the British Government. Bangalore is not, and never has been, a military general camp, or field detachment bazaar, but wholly and entirely a civil bazaar, under the control of the superintendent of police, acting under the authority and in behalf of his Highness the Rajah of Mysore, but deriving no authority in such capacity from the British Government.

It would be most desirable, however, that the commissariat officer at Bangalore, holding the police authority, should be vested with the powers contained in section 41, as far as regards the description of military enumerated in the first clause of section 13; and also all those receiving public pay enumerated in the second clause of the same section; all other persons mentioned in clause 2, are already amenable to the superintendent of police, under his warrant from the Mysore government.

Section

* Sec. 13, clause 1: "All native non-commissioned officers or soldiers whatever; all natives receiving pay or hire in the service of the artillery, engineers, or pioneers; all military surveyors or draughtsmen; all farriers, drummers, or trumpeters; and all apothecaries, assistant apothecaries, dressers, and hospital attendants."

Clause 2: "All natives not specified in clause 1, receiving public pay drawn by officer in charge of a public department appertaining to the army; all artificers and labourers appertaining to the army or military arsenals; all servants of military officers; all public and private servants on the establishment of chaplains at military stations; and all registered military bazaar men."

Section 42, vesting the officer commanding, &c. with certain powers at stations beyond the frontier, if considered merely as regarding individuals borne on the strength of corps and detachments, in receipt of military pay, might be rendered applicable (if not already) to this cantonment, with peculiar advantage, as tending to remove every inconvenience which has ever been experienced in determining civil suits above the sum of rupees 400.

The other classes contained in this section are now amenable to the superintendent of police in all suits under the sum of 500 pagodas, and in excess of that to the Court of Sudder Udawlut.

The experience of many years has proved the system of police now in force to be most efficacious, and it may be questioned whether any other could be introduced more calculated to afford protection and satisfaction to the community, or advantage in every way to the public interest.

(signed) *E. Armstrong*, Capt.
Bangalore, 8 September 1833. D. A. C. G. & Superintendent of Police.

(A true copy.)

(signed) *R. Alexander*, Judge Advocate-general.

From *W. Macleod*, Esq. Superintendent of Police at Bangalore, to the Officer commanding Bangalore, dated the 23d April 1838.

Sir,

In acknowledging the receipt of Captain Baker's letter of the 21st of April 1838, with its enclosure, (letter of date 16 April 1838, from Deputy Adjutant-general of the army, at Fort Saint George) now returned, I have the honour to acquaint you that my authority as superintendent of police being exercised under the warrant of his Highness the Rajah of Mysore, the Regulations quoted respecting punchayets is not in force, although punchayets are occasionally assembled much on the same principle.

Respecting courts of request, I have the the honour to state that the record of these proceedings are not in my office, nor have I anything to do in assembling or conducting such court.

I have, &c.
(signed) *W. Macleod*,
Bangalore Police-office, 23 April 1838. Superintendent of Police.

(True copy.)

(signed) *R. Alexander*, Judge Advocate-general.

From *A. M'Cally*, Esq. Superintendent of Police of Bangalore, to the Officer commanding Cantonment of Bangalore, dated the 10th July 1838.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 23d June 1838, with its enclosures, and to forward herewith my replies to the queries contained in the Adjutant-general's letter of the same date.

I have, &c.

(signed) *A. M'Cally*,
Bangalore Police-office, 10 July 1838. Superintendent of Police.

(True copy.)

(signed) *R. Alexander*, Judge Advocate-general.

Queries.	*Replies.*
1. Is there any warrant granted to the superintendent of police at Bangalore, by the Rajah of Mysore, or does the commissariat officer act upon the sunnud forwarded to the Chief Secretary to government, Madras, by the British Resident, on the 8th February 1813? If there be a warrant, it is requested a copy may be furnished.	1. The authority under the seal and signature of his Highness the Rajah of Mysore, granting to Captain Cubbon, and his successors in office, certain powers in the administration of justice in the cantonment and fortress of Bangalore, is the warrant or sunnud under which the commissariat officer at Bangalore now acts. The original sunnud was transmitted to the Chief Secretary to Government by the Resident at Mysore, in his letter of the 8th February 1813, and is supposed to be lodged in the Chief Secretary's-office.
2. When a person in receipt of pay from the government is tried for debt, and a decision is given against him by the superintendent of police, or by the decision of a	2 & 3. The authority is vested in the commissariat officer as above, extends only to persons strictly non-military, the Rajah of Mysore not having delegated any authority

No. III.–Part 1. Military Courts of Request.

Queries.	*Replies.*
punchayet assembled by him under the authority granted by the Rajah of Mysore, what course is adopted to enforce payment of the decree? In the event of there not being sufficient personal property to answer the demand, is real property liable to seizure? And in the event of there not being sufficient of any kind to satisfy the demand, what are the ultimate measures resorted to in the case?	over subjects of the British Government, who were in receipt of pay from that Government; claims therefore for debt, complaints for assaults, and generally all complaints against the military classes, as defined above, were referred by the superintendent of police either to the officer commanding the regiment, or the head of the department to which the party complained of belonged, by whom every endeavour to redress the subject of complaint was made. In the event of failure, the case was retransferred to the superintendent of police, with the reply or explanation of the defendants, and the whole matter was then submitted to the officer commanding the cantonment, with whom it rested to prosecute any further steps. Few instances are known of a process of imprisonment, and none of distraints for fine or debt being issued by the superintendent of police in the case of any of the military classes; that is, persons in the pay of the British Government. Real as well as personal property is considered liable to seizure in enforcing a decree.
3. As by the sunnud abovementioned the commissariat officer has the Rajah's authority to punish certain crimes, not defined, at his discretion, should a fine be imposed on any of the military classes or persons drawing pay from government, and the criminal not have the means of payment, what ulterior measures are, under such circumstances, resorted to?	
4. It is desirable to know what record is kept of proceedings and decisions in civil suits, as also of the nature of the record kept of criminal cases, and what check or control is exercised by the officer commanding in the cantonment?	4. The officer commanding the cantonment is vested with full police authority in the cantonment and fortress of Bangalore, as far as respects all the military classes, and generally can exercise control over all such measures of the existing police system as tend, in his opinion, to affect the well-being of the force under his command; but he exercises no direct interference with the police officer in any of those duties which specially devolve upon him, as the delegate or agent of the Mysore State, by which he is vested with criminal and civil jurisdiction over its own subjects. The record kept of civil cases contains the plaintiff's name, defendant's name, nature and amount of claim; witnesses' names, if any, and decision of the superintendent of police, with dates, &c. The same description of record is kept of criminal suits; in cases of a grave nature, written depositions are taken upon oath, and filed, and if of sufficient magnitude to be out of the jurisdiction of the police court, the case is forwarded to the Commissioner for Mysore. In ordinary cases, both criminal and civil, the proceedings are summary; evidence is heard *vivâ voce*, and not recorded, and only notes taken of it.

(signed) *A. M'Cally*,
Superintendent of Police.

(True copy.)

(signed) *R. Alexander*,
Judge Advocate-general.

Appendix (C.)

GENERAL ORDER by His Excellency the Commander-in-Chief, 10 February 1835.

Legis. Cons. 12 August 1839. No. 25. Enclosure.

THE Commander-in-chief is pleased to publish the following Memoranda for the constitution of military courts of request assembled under the provisions of Act 4 Geo. 4, c. 81, and for the guidance and disposal of their proceedings:—

1. In all practicable cases a field officer is to be detailed as president of such courts, and captains and subalterns of not less than eight years' standing, as members.

2. The court having met, the members and president are duly sworn upon each trial separately.

3. The

3. The plaintiff and defendant being both in court, the court requires of the plaintiff (not upon oath) what the nature of his demand is, and on this being stated, interrogates the defendant (not upon oath) as to whether he owns the debt and acquiesces in the statement of the plaintiff or not. This preliminary examination of the parties is to be conducted by the court to such extent as may appear to be desirable; it is to be remembered that such declarations as either party may make against his own interest, although not upon oath, are good evidence against himself.

4. Should the defendant acknowledge the debt, a decree is then passed and recorded accordingly, and the court closes its proceedings on the case.

5. Should the defendant deny the debt, the plaintiff is called upon for his proofs, and his witnesses being produced, are examined on oath by the court, subject to cross-examination by the defendant, and their evidence recorded.

6. The defendant is then in like manner called upon, and the evidence of the witnesses on the defence, subject to cross-examination by the plaintiff, is duly recorded.

7. The court then decides according to the evidence before it, and the decision is entered upon the record, special attention being given in the event of finding any debt or damage due to the provisions of section 57 of 4 Geo. 4, c. 81, and the mode of proceeding therein prescribed.

8. Although neither party can be sworn in support of his own cause at his own desire, yet either party may be required by the other to give answer upon oath, or may be ordered to resort. But it is only usual for the court to resort to such a measure when a decision is about to be pronounced upon the statements of the parties only, without evidence of any kind, or when the evidence adduced is altogether insufficient and unsatisfactory; in such cases the court directs such party as it may deem best. *Sic.*

9. If either party, having been sworn at the request of the other, make such answer as may be prejudicial to the cause of the adverse party, such evidence must, nevertheless, be received and recorded, and due weight given to it accordingly.

10. If a party refuse to be sworn when requested by the other party or ordered by the court, such refusal is to be deemed contumacious and tantamount to a confession against himself, and judgment is to be passed and recorded against him accordingly.

11. One party having been sworn at the request of the other, or by order of the court, the other party is not in any case to be sworn. The plaintiff may, if he pleases, require the defendant to be sworn in support of the prosecution, and this precludes the defendant from making a like demand on the defence.

12. A court of requests cannot in any case decide suits touching land or houses; neither can it on any pretence direct such to be seized or sold in satisfaction of its judgments or decrees.

13. A court of requests is essentially a court of equity and conscience, not bound down by the same strictness of rules and form which attaches to the courts of law generally; and the members thereof are to recollect that they are to make such inquiry as may enable them according to their conscience to do entire justice to both parties. A claim for money due, for instance, might be met by a counter statement of damage done by the adverse party, and the court would then make inquiry, and decide according to the equity of the case. *A.* being servant of *B.*, claims wages due; *B.* admits that the wages are due, but states that certain articles intrusted to the said *A.* his servant, of equal or greater value than the wages due, have been wantonly lost or destroyed by him; the court would thereupon require evidence, first as to the actual intrusting of the articles in question to *A.*, and secondly, as to their value and the circumstances under which they were lost or destroyed, and then pronounce judgment accordingly.

14. No creditor can be allowed to divide his demand against the same person into several suits, for the purpose of reducing it within the jurisdiction of a court of requests; but if he be willing to limit and restrict his entire demand to the sum of 400 rupees, and to quit claim to the surplus of the debt over and above the said sum, then his suit may be admitted accordingly.

15. The statement of the parties, as well as all evidence admitted by military courts of request, are invariably to be entered on the record.

16. The proceedings having been concluded on the particular, are to be sent to the commanding officers, in order to the judgment of the court being duly carried into effect.

17. The proceedings of the military courts of request are to be recorded separately upon each trial, and the record is finally to be deposited in the station or cantonment office.

The above memoranda are also to be considered to be of general application to the proceedings of courts martial held under the provisions of the native articles of war, and Regulation VII. of 1832, in the nature of courts of request, where the defendant may be a native of India. Such courts are, however, invariably to be constituted of native officers, a subadar major, in all practicable cases, being detailed as president, and subadars or jemadars of not less than eight years standing as members, with a superintending officer,

No. III.–Part 1.
Military Courts of Request.

and an interpreter attached to the court, and the awards thereof are to be regulated solely by the articles of war and the Regulation quoted.

(True copy.)

(signed) *R. Alexander,*
Judge Advocate-general.

G. O. C. C. 25 July 1835.

With reference to the memoranda published in G. O. C. C. 10th February 1835, it is hereby notified for general information, that in cases where persons having claims are unable to attend in consequence of residing at a distant station, or from any other sufficient cause, courts of request are competent to admit the prosecution of the suit by any person duly authorized to appear on behalf of the plaintiff.

Here follows Regulation VII. 1832, Madras Code.

Appendix (D.)

Act VII. Sec. 12.

"AND be it further enacted, that all actions of debt against commissioned officers, non-commissioned officers, soldiers, or other persons amenable to these rules and articles, except such as may be cognizable by the commissariat officer in charge of the police, shall be cognizable before line, garrison, detachment, or regimental courts martial, as the case may be, and not elsewhere, provided the value in question shall not exceed 200 Arcot rupees, and that the defendant was a person of the above description when the case of action arose, and it shall be competent for such courts, upon finding any debt or damage due, to direct the amount of the same, if not paid forthwith, to be levied by seizure and public sale of such of the debtor's goods, saving his regimental appointments and necessaries, as may be found within the camp, garrison, or cantonment, under a written order of the commanding officer, grounded on the judgment of the court; and if sufficient goods shall not be found to answer the demand, then any money due to him from government, or any sum not exceeding the half of the pay of the debtor, shall be stopped in liquidation of the debt; and if any debtors shall not receive public pay, but shall be a servant or follower, he shall be arrested by the order of the commanding officer, and imprisoned in some convenient place within the military boundaries, for the space of two months, unless the debt be sooner paid."

(True copy.)

(signed) *R. Alexander,*
Judge Advocate-general.

No. III.–Part 2.
Military Courts of Request.

Legis. Cons. 12 August 1839. No. 26.

— (A.) No. III.—Part 2. —

MILITARY COURTS OF REQUEST.

Proposed Modification in Regulation VII. of 1832, Madras Code.

MINUTE by the Honourable *A. Amos*, Esq., dated 19th December 1838.

THIS subject has been standing over for a considerable time, together with various other military matters, in order that they might be considered in connexion with the subject of courts of request.

I have prepared a draft Act preventive of the stoppage of the pay of sepoys.

It will be necessary, however, to consider the suggestions of the sudder courts, viz. 1. That where the sepoy has no seizable property, there will be no remedy for the creditor; and 2d. That as the law stands, not only cannot more than half the pay be stopped, but that it is within the discretion of the commanding officer to refuse stopping even to the extent of a half, so that the commanding officer may prevent more being seized than will leave sufficient for the soldier's necessary wants.

It will require consideration, whether the principle of the proposed Act should be adopted, or whether the bazaar people should be prohibited from giving credit beyond the amount of a month's pay, by enacting that no debt exceeding in amount a month's pay shall be recoverable in any court of requests. I have prepared an Act to this effect, but I incline to think that its principle is more objectionable than the principle of the other draft proposed; for if we were to enact merely

merely that no sum shall be recoverable beyond a month's pay, the enactment would be avoided by splitting or transferring demands; and if we make the credit given our criterion, the defendant would often be induced to resort to perjury. Besides, such a law would prevent any credit beyond a month's pay, even where the debtor has other funds and effects besides his pay.

(signed) *A. Amos.*

ACT.

Legis. Cons. 12 August 1839. No. 27. Enclosure.

1. It is hereby enacted, that no action of debt against any commissioned officer, non-commissioned officer, or soldier belonging to the native forces of the East India Company shall be cognizable before any court martial or court of requests composed of military officers, or before any commissariat or other officer, in charge of the police at any military station, except such debt shall have been contracted in a regimental bazaar, and in the ordinary business of such bazaar.

2. And it is hereby provided that every action of debt against any such commissioned officer, non-commissioned officer, or soldier, contracted otherwise than as aforesaid, shall be cognizable in like manner, and be subject to the like forms of procedure as actions of debt against any such commissioned officer, non-commissioned officer, or soldier, which before the passing of this Act were cognizable otherwise than as aforesaid.

3. And it is hereby enacted, that no part of the pay of any such commissioned officer, non-commissioned officer, or soldier shall be stopped in liquidation of any debt; but where execution is awarded by any such court or officer of police as aforesaid, if sufficient goods are not to be found by the seizure and sale of which the debt may be levied, the debtor shall be arrested by a written order of the officer convening the court by which execution has been awarded, or of such officer in charge of the police as aforesaid, and imprisoned in some convenient place of confinement within the limits of the station, garrison, cantonment, or military bazaar within which the court or officer of police awarding execution has jurisdiction, for the space of two months, unless the debt be sooner paid; and the goods of the debtor, if found within such station, garrison, cantonment, or military bazaar at any subsequent time shall be liable to be seized and sold in satisfaction of the debt, under such written order as aforesaid.

Minute by the Honourable *A. Amos*, Esq.

Legis. Cons. 12 August 1839. No. 28.

I have proposed a draft Act for the purpose of discussion, pursuant to the views of Colonel Morison and Colonel Stewart, expressed at the last meeting.

I doubt whether all the consequences of the measure have been fully discussed; and I think that the draft may probably require to be modified. For will it not be attended with great inconvenience if soldiers shall be subject to arrest by the civil authorities for trifling debts incurred at sudder bazaars and elsewhere. Military courts were established on purpose to avoid the arresting of soldiers for debts under 200 or 400 rupees. It will be a very important alteration in the present military law to allow of arrests for any debts except those incurred in regimental bazaars.

It will be important to consider the difference in the provisions of the different presidencies in regard to the matters affected by this draft.

By the Madras Code, Regulation V. of 1827, Regulation VII. of 1832, all debts against commissioned officers, non-commissioned officers, soldiers, or certain other persons are cognizable before line, garrison, detachment, or regimental courts martial, or before the commissariat officer in charge of the police (when under 20 rupees) and not elsewhere, provided the defendant was a person of the above description at the time the cause of action arose, and the amount exceeds 400 rupees.

On finding any debt or damage due, the amount is to be levied by distress and sale of goods within the camp, &c., under written order of the commanding officer; if sufficient goods are not found, public money or any sum not exceeding half the amount of pay shall be stopped. If the party does not receive pay, he is to be imprisoned.

No. III.- Part 2.
Military Courts of Request.

There are some special rules as to the arrest of persons of the above descriptions in actions left to the civil courts.

By the *Bengal* Code, Regulation XX. of 1810, Regulation XX. of 1825,

Debts and personal actions against officers (perhaps non-commissioned officers may be considered as included), soldiers, and persons of a certain (differing from the Regulations of the other presidencies) description, shall be cognizable before a military court, and not elsewhere, provided the value does not exceed 200 rupees, and the defendant was a person of the above description when the cause of action arose.

The court is to consist of from five to three members, and shall be composed of European officers when European officers are the parties concerned, and in all other cases of native officers; the court to be convened monthly by the commanding officers of corps and stations.

Execution may be general, or special out of such part of pay or public money as the court may direct. When execution is general, and no effects can be found, the debtor shall be imprisoned, and his future effects are liable.

By the *Bombay* Code, Regulation XXII. of 1827,

Actions of debt and personal actions, not exceeding 400 Bombay rupees, against officers, non-commissioned officers, soldiers, and certain other persons (differing as before), shall be cognizable before a military court, or superintendent of bazaar (when under 30 Bombay rupees), provided defendant, when the suit was instituted, and the cause of action arose, was a person of the above description.

The court is to be convened by the commanding officer of a station or cantonment. It is to be composed, according to orders of the Commander-in-chief or commanding officer of the forces for the time being, or in the absence of such orders, according to the discretion of the convening officer, either of not less than three European commissioned officers, or of not less than three native commissioned officers, with an European superintendent. Execution may be general or special, as in the Bengal Code.

If there are not sufficient effects under a general execution, public money, or a sum not exceeding half the pay, shall be stopped. If the party does not receive pay, imprisonment.

It will be observed,

1. The proposed draft does not alter the law as to personal actions, not being debts.

2. It takes away the "special" execution of the Bengal and Bombay Codes. This special execution out of the soldier's pay does not appear to be so very objectionable, for it would seem to be discretionary. I doubt whether the Madras sudder judges were correct in observing that the stoppages in default of goods under a general execution were discretionary. These occur in the Madras and Bombay Codes only.

3. The proposed draft does not alter the law as to persons not being officers, non-commissioned officers, or soldiers; these persons are a different class in each presidency.

4. Clause 3 is framed on the model of the Bengal Regulation XX. of 1810, Sec. 22 (omitting the special execution), but with considerable modification on account of the Bengal Regulation not providing for execution where it is awarded by a military officer of police.

There is a vagueness in the Regulations, by which orders of execution, and various matters, are to be done by the commanding officer; to avoid which, I have made the order to be written by the officer convening the court, or the officer of police.

(signed) *A. Amos.*

Legis. Cons.
12 August 1839.
No. 29.
Enclosure.

ACT.

It is hereby enacted, that no decision in any civil suit passed by any military court of requests, or by any officer in charge of military police, or by any punchayet summoned by such officer, shall be enforced against any commissioned officer, non-commissioned officer, or soldier belonging to the native army of the East India Company, by the stoppage of any part of the pay of such commissioned officer, non-commissioned officer, or soldier.

ACT.

IT is hereby enacted, that no civil debt shall be recoverable before any military court of requests, or before any officer in charge of military police, or before any punchayet summoned by such officer, against any commissioned officer, non-commissioned officer, or soldier belonging to the native army of the East India Company, where such debt shall have arisen out of any credit exceeding the amount of one month's pay of the defendant.

MINUTE by the Honourable Mr. *Amos*, dated the 27th December 1838.

Legis. Cons. 12 August 1839. No. 30.

I HAVE compared the laws and regulations in force respecting military courts of request, and have examined the various papers containing complaints and suggestions upon the subject. We have required and obtained official reports from the presidencies of Madras and Bombay, but we have not written to the Straits; and although incidentally we have got some notices of the decisions of sudder courts on the subject, yet I am not certain that we are in possession of all the decisions of the sudder and supreme courts which it may be necessary to advert to before we publish any Act of Consolidation.

I am prepared, without waiting for further information, to lay before Council for their consideration a draft consolidation Act for military courts of request; but there are so many questions of a military nature which must affect the clauses of the proposed Act, that I submit whether it may not be advisable to postpone the consideration of the Act in Council until the principal military authorities (especially the Judge Advocate) shall be more at leisure to attend to such matters than they can be at present, and perhaps till their arrival at Calcutta.

I send the two first clauses of the proposed Act by way of specimen. Some observations upon these two clauses will perhaps be sufficient to show the difficulties of the subject. I have lettered the provisions of the proposed Act to which my remarks are directed.

(*a*) One question arises whether we may and ought to include the Queen's forces. They are included when serving with the Company's forces by 4 Geo. 4, c. 81. I have not included them.

Another is, whether we may and ought to include the Company's European forces. I have included them. If we do not include them, these inconveniences will arise: first, we must make two Acts with nearly similar provisions, for the Act of 4 Geo. 4, c. 81, can scarcely be left with its present imperfections; secondly, we shall leave all the uncertainty, so much complained of in several of the papers, arising out of the terms in Regulation XX. of 1825, of "British subjects" and "European British subjects."

(*b*) One question arises, whether we have power to make provision for courts of request beyond the frontier. The clause is limited to the frontier.

Supposing that we can make provision for courts of request beyond the frontier, several controverted questions occur as to what distinctions should be made in the jurisdiction, but these would not be detailed in the first clause.

(*c*) Some difference exists as to including "personal actions," and as to the species of personal actions included.

(*d*) The description of persons not being officers, non-commissioned officers, or soldiers, who are to be amenable to military courts, is different in the Act 4 Geo. 4, c. 81, the Bengal, Madras, and Bombay Regulations respectively. Military men must decide on the selection. I am only aware of one point which has been matter of controversy, *i. e.* as to non-military persons who are residents within cantonments, and not serving with the army. This point should be settled.

(*e*) The respective Regulations and Act differ between 200 and 400 rupees. This must be settled of course; the rupees must be all brought from Sicca, Bombay, and Arcot rupees to Company's rupees.

(*f*) The respective Regulations and Act differ between making only those amenable who are so at the time the debt was contracted, and also when the suit was instituted, or only requiring the first condition to be established.

(*g*) The Bengal Regulations provide for the court being convened monthly, and shortly before pay-day. The convening officer is different in different Regulations.

(*h*) The Bombay Regulations leave it discretionary with the Commander-in-chief or convening officer, whether the court shall consist of Europeans or native officers. The term "Europeans," is used in the Bombay Regulations without

No. III.-Part 2.
Military Courts of Request.

adverting to the distinction of Europeans by descent only. Some rules as to the selection of European or native officers should be adopted. At Bombay, it would seem, that European officers might sit where the defendant was a native, but under the 4 Geo. 4, c. 81, it is obvious that Europeans must sit in courts under that Act, whether the plaintiff be an European or a native. The Bengal Regulations in effect provide that wherever the defendant is an European officer, European officers shall sit; in other cases native officers sit. The Madras Regulations make no distinction in the constitution of courts of request and other courts martial, thereby leaving the discretion with the convening officer.

As to the numbers of the members, it would, I think, be expedient to adopt the limits of five and three, though this is different in some measure from the Madras rule, which makes no difference between the constitution of courts of request and courts martial.

The principal provisions to be consolidated, are 4 Geo. 4, c. 8, ss. 55, 56, 57. 64. Bombay Regulations XXII. of 1827, XXII. of 1831; Bengal Code XX. of 1810, XX. of 1825; Madras Code V. of 1827, VII. of 1832. Besides which, there are about 40 suggestions contained in the correspondence.

(signed) *A. Amos.*

Legis. Cons. 12 August 1839. No. 31. Enclosure.

ACT.

1. It is hereby enacted that in all places within the territories of the East India Company, where the (*a*) forces of the East India Company are, or may be employed, situate (*b*) beyond the jurisdiction of any court of requests established at the cities of Calcutta, Madras, and Bombay respectively, actions of debt, and all personal actions (*c*) against officers, non-commissioned officers, or soldiers belonging to such forces, and (*d*) against all persons attached to or serving with any corps or detachment of such forces, shall be cognizable before a court of requests composed of military officers, and not elsewhere, provided (*e*) the value in question shall not exceed 400 rupees, and (*f*) that the defendant was a person of the above description when the cause of action arose.

2. And it is hereby enacted, that the commanding officer of any station, cantonment, garrison, corps, or detachment, is hereby authorised to convene such a court of requests (*g*). And the said court shall in all practicable cases consist of five (*h*) commissioned officers, and in no instance of less than three. The officers comprising the court shall be European officers by birth or descent, or native officers, according to the discretion of the officer convening the court. When the court is composed of native officers, an European officer by birth or descent shall be appointed to superintend and record the proceedings.

Note by the Honourable *A. Amos*, Esq. dated the 2d February 1839.

Legis. Cons. 12 August 1839. No. 32.

Act for Military Courts of Request.

This draft is, perhaps, now in a state for being submitted to the military authorities of the different presidencies for their modification. It may be proper to premise, that at present the law respecting courts of request for the Company's European troops, and for the Company's troops at the three presidencies, are all materially different from each other. An attempt was made to consolidate and amend the provisions which concerned the native forces, in a draft submitted to the government by the Commander-in-chief; it constitutes the 84th Article of proposed articles of war, and accompanies this Minute. The principal object of the following observations, is to point out the alterations made in the Regulations of the different presidencies.

Sect. 1. "Actions of debt and all personal actions," Madras Code, Regulation V. of 1827. "Actions of debt," sect. 8, Article 7.

Madras Code, Regulation VII. of 1832, sect. 21, clause 2, contains further explanation of suits not cognizable by military courts.

"Against Native Officers," &c.

Bombay Code, Regulation XXII. of 1827, ch. 2, sect. 7, clause 1, "Persons of the descriptions stated in sect. 3, clause 1, of that Regulation." That clause includes

includes all persons of certain descriptions belonging to the Bombay army, not being British-born subjects. These descriptions do not agree, in terms at least, with those in the articles of war. They include "all persons residing or following any occupation at a cantonment or military station." They do not specify bazaar-men; nor does it appear that the code contains provisions for registering bazaar-men.

Madras Code, Regulation V. of 1827, sect. 10, Art. 7, "Persons amenable to these rules and articles." These persons are to be collected from Art. 10 of the same section. They do not agree in terms with the persons amenable to the articles of war. They do not, as in the Bombay Code, apply generally to persons residing in cantonments, and no mention is made of bazaar-men. In Regulation VII. of 1832, section 13, clause 2, a new list is given, which by sect. 21, clauses 1 & 3, is to determine the jurisdiction of courts of request and of the military police officer; but the like observation applies to the new list as to the old, with some important exceptions. Bazaar-men registered according to sect. 5 of that Regulation are included; also the officers of military servants and of chaplains; and beyond the frontier a more enlarged description, including all persons residing within the camp or cantonment, is adopted.

Bengal Code, Regulation XX. of 1810, sect. 22, "Officers, soldiers, retainers, of description mentioned in Sect. 2 of that Regulation, persons registered as attached to sudder bazaars, bazaars of corps, or menial servants of officers." Sect. 2 does not agree in terms with the articles of war, or with the Bombay or Madras Regulations. By Regulation XX. of 1825, it is declared that Regulation XX. of 1810, does not extend to British subjects attached to the army, within the descriptions specified in sect. 57 of 4 Geo. 4, c. 81; but that it does extend to those descriptions of persons if they be not European British subjects. The effect of this Regulation is somewhat ambiguous, for the list in 4 Geo. 4, c. 81, is, in some respects, more extensive, and in others less so, than that in Regulation XX. of 1810, sect. 2. Regulation XX. of 1810, provides for the registry of bazaar-men for defining the stations and cantonments which shall be deemed to be within the operation of the rules; and that, for some purposes at least, if not for civil suits, the registered bazaar-man must be actually following his occupation.

"Provided the value in question shall not exceed 400 rupees;" 200 rupees is the limit by the Bengal Code; each of the codes specify local rupees.

"Provided the defendant was a person of the description mentioned at the time when the suit was instituted, and when the cause of action arose."

The 4 Geo. 4, c. 81, does not include the provision "when the suit was instituted." It is included in the Bombay Code, but not in the Madras or Bengal Codes.

N. B.—The 4 Geo. 4, c. 81, and the Bombay Code, contain an important provision: That they are not to apply within the limits of the civil courts of request.

General Remarks on Section I.

Although the provisions respecting courts of request are not properly a part of the articles of war, yet our jurisdiction is too doubtful to interfere with 4 Geo. 4, c. 81. Hence arises a difficulty, which has been much complained of, in determining who are subject to the native courts of request. The Bengal Regulation has by no means removed the difficulty by saying, "all but European British subjects." Regulation XX. of 1825, sect. 4, clauses 1 & 4. It may be inquired whether the difficulty is not the same in regard to the native articles of war, and whether the local legislature should attempt to resolve, on the present occasion, this *vexata questio*.

As to the description of persons amenable to courts of request, it is for military men to choose out of six different lists, viz. the codes of the three presidencies, the statute, the articles of war, the present Act, and the Commander-in-chief's draft.

I have some doubts whether this Act should not, in imitation of the Bengal Code, lay down uniform rules for defining stations, bazaars, and cantonments, and for the registry of bazaar-men; otherwise, perhaps the operation of the Act may be different in the different presidencies. This, however, would lead to much detail, and might be found inconvenient in the Bombay and Madras presidencies.

Military men must decide upon the other discrepancies pointed out in the different codes.

Section 2, "Commanding officer of any station or cantonment.", Bombay Code, Regulation XXII. of 1827, sect. 7, clause 2, so provides.

No. III.–Part 2.
Military Courts of Request.

Madras Code, Regulation V. of 1827, sect. 12, Art. 7. The court of requests is to be a "line, garrison, detachment, or regimental court martial," and to be convened accordingly.

Bengal Code, Regulation XX. of 1810, sect. 23. The court of requests is to be convened as courts martial under that Regulation.

"And such courts shall be composed," &c. Bombay Code, Regulation XXII. of 1827, sect. 7, cl. 2, so provides.

Madras Code, Regulation V. of 1827, Art. 11, sect. 8. The numbers differ, and there is no reference to any distinction between Europeans and natives, or any orders from the Commander of the Forces.

Bengal Code XX. of 1810, same observation applied as to Madras Code.

Sect. 3. It will be found that the codes are defective or discrepant as to most of the points in this section. It seems convenient to reduce them all to the standard of the articles of war; but it may require consideration, as offences incident to courts martial are, for the most part, punishable by courts martial, by which tribunal the like offences when incident to courts of request should be punished. There seems to be good reason for the same punishment, though it will probably appear inconvenient either to entrust the power of punishing to the court of requests, or to summon a court martial for the purpose, or to give exclusive power of punishment to a civil court.

It is an important consideration, how far it is advisable to specify the details of procedure more at length in this Act. Nothing is to be found upon this subject in the codes; but various rules of practice are detailed in General Orders for the Madras army, dated 10th February 1835, 25 July 1835. These have been adopted in Bombay, but apparently not in Bengal. It is to be observed that they are drawn up with reference not to the native troops, but to 4 Geo. 4, c. 81. These rules, though no doubt useful in practice, are defective; besides being open to criticism, several of the rules are the subjects of separate subsequent clauses in the present Act. As the practice of courts of request is so much a matter of experience, I think one of the Judge Advocates should draw up a set of rules for the consideration of government, to be inserted by way of appendix to the Act. I have adopted in subsequent clauses several suggestions of the Judge Advocate of Madras upon this subject; but have omitted the following, as entertaining some doubts regarding their necessity, or expediency of them. They are, however, deserving of consideration, viz.

1. Touching non-appearance of plaintiff or defendant.
2. Interrogatories for distant witnesses.
3. Interval for summoning of witnesses.
4. Rule as to swearing of parties.
5. More distinct modes for executing decrees.
6. New provisions for stoppages, where a regiment passes into another range of payment.
7. Agreements for more than 12 per cent. interest.
8. Crying down credit in sudder bazaars.
9. Contracts to be written in languages of both contracting parties.

Sect. 4. The first provision of this section is peculiar to the Bengal Code, Regulation XX. of 1810, sect. 22. The second provision is new, and is meant to be auxiliary to the new power of revision subsequently provided for.

Sect. 5, 6, 7. This mode of trial by a single officer is peculiar to the Madras and Bombay Codes; it does not enter into the Bengal system, and was excluded from all the presidencies by the proposed 84th Article of War.

In consequence of the suggestions of the Madras Judge Advocate, the jurisdiction is limited to the senior commissariat officer. The clauses in the Bombay Regulations respecting the "Superintendent of Bazaars," are Regulation XXII. of 1827, sect. 32, clauses 1, 2, 3; the limit in amount is 30 rupees. The Madras rules respecting the "Officer in immediate charge of the Police," are contained in Regulation VII. of 1832, sect. 21, clauses 3, 4; the limit in amount is 20 rupees.

The section in the text is taken partly from the Madras and partly from the Bombay Regulations, modified by the suggestions of the Madras Judge Advocate.

Sect. 8. The objects of this section were imperfectly provided for in the Madras and Bombay Codes, but the like observations occur as were made upon sect. 3.

Sect. 9, 10. These sections are pursuant to suggestions by the Madras Judge Advocate

Advocate. They contain an important alteration in the law with regard to the revision of decrees.

Sect. 11, 12, 13. These sections relate to the very important subject of the execution of decrees passed by military courts of request and by the commissariat offices. Some of the details have been taken from one code and some from another, but the substance of the provisions is taken from the Bengal Code, the principle of which code is opposed to the Bombay and Madras Code, and does not allow of any stoppages in default of a general execution.

All the Madras military authorities represent in the strongest possible manner the mischiefs arising to the discipline of the Madras army from the credit given at sudder bazaars, and the consequent stoppages of pay. It has been proposed to limit the amount of credit in those bazaars, a subject upon which I have written in reference to a draft of an Act now in the Military Department, framed for this purpose; but there are considerable difficulties in the way of any measure for accomplishing this object. Whether the adoption of the Bengal rule as to general executions will at all diminish the evil, may deserve consideration.

Sect. 14, 15, 16, 17. These sections are pursuant to suggestions of the Madras Judge Advocate.

Sect. 18. There may be some doubt whether the Council has authority to pass this section,—a matter which may be subsequently inquired into. The terms of the provision are taken from the proposed 84th Article of War. The Law Commissioners thought that even beyond the frontier a limit in amount should be assigned. The terms of the section do not agree with those in any of the codes. I have added a provision respecting trials beyond the frontier by the commissariat officer, pursuant to Sect. 41, Regulation VII. of 1832, of the Madras Code. In the draft article of war it was obscure whether the cause of action must have arisen beyond the frontier. Attention is requested to the Madras papers respecting suits for real property in cantonments beyond the frontier.

Sect. 19. The mode of trying military suits by a punchayet is the subject of numerous clauses in Regulation VII. of 1832, of the Madras Code, and it is peculiar to that code. These clauses have received constructions from the Sudder Civil Court of Madras, and various amendments of them are suggested; they constitute a small code of themselves. I have delayed the revision of the law of punchayets in military causes until it shall be determined whether the species of trial is to be introduced into the Bengal and Bombay armies.

Omissions.

The draft Act now submitted is principally taken from materials in the codes of the three presidencies, lying dispersedly and in connexion with other matters; viz. general military regulations, articles of war, and the police of bazaars. In abstracting the matter immediately connected with the present subject of the present Act, which I apprehend is exclusively that of the "Recovery of debts, and compensation for personal damage," I possibly may have rejected some provisions which it may be thought might be advantageously inserted. I proceed to notice those upon which I have had some doubts respecting their expediency or applicability, and which I have omitted, subject to further discussion.

Bombay Code, XXII. of 1827. The whole of chap. 5, concerning "Process by civil authority, how to be conducted within the limits of cantonments."

Ibid. Sect. 32, clause 3, explanatory of the jurisdiction of the superintendent of bazaars.

Madras Code, VII. of 1832, sect. 21, clause 2, explanatory of the nature of suits to be tried by courts of request.

Ibid. Sect. 22, clauses 1, 2, 3, 4, as to terms of suit in civil courts against military persons.

Ibid. Sect. 23, Certificate of belonging to military classes.

Ibid. Sect. 21, Stamp duties.

Ibid. Sect. 22, Interest of money.

Ibid. Sect. 34, Forwarding military persons to the civil power.

Ibid. Sect. 38, Extension to other than military bazaar stations.

Ibid. Sect. 39, Civil arrests within military stations, clauses 1, 2.

Bengal Code, XX. of 1810, sect. 19, Execution of process of arrest within military stations.

Ibid. Sect. 20, Execution of arrest against bazaar-men, laying down and confirming of limits of bazaars and cantonments.

No. III.-Part 2. Military Courts of Request.

Bengal Code, XX. of 1810, sect. 24, respecting process of arrest from civil courts against military persons.

Ibid. Sect. 25, Process of arrest from civil courts against bazaar-men.

Ibid. Sect. 26, Proviso against dispossession of lands and houses.

As to the registry of bazaar-men, and the defining of stations and cantonments, *vide* general observations on sect. 1 of the text.

Bengal Code, XX. of 1825, sect. 4, clauses 1, 2, 3, 4, exempting from the Act European British subjects, or British subjects.

It only remains to add several suggestions which are to be collected from the papers, which may be very deserving of consideration in the forming of a military code, but which are not immediately connected with the recovery of debts, and compensation for personal damage, which, I apprehend, is the proper subject of the present draft Act:—

1. Better definition of police powers in military bazaars.
2. Giving to superintendent of police the powers of coroner.

And generally attention is requested to the various points noted and commented on by the Law Commissioners, in their communication to Council, dated 15th June 1838, and in the Report of the Judge Advocate of Madras, communicated by the Madras government, in a letter dated 11th September 1838, which two documents apparently contain or notice all the suggested amendments which have been recommended. It will be seen that many of these relate to punchayets; a subject which, for the reasons before mentioned, has been postponed.

(signed) *A. Amos.*

From General *Casement* to the Honourable *A. Amos*, Esq., dated the 20th April 1839.

Legis. Cons. 12 August 1839. No. 33.

My dear Mr. Amos.

I HAVE perused with attention the drafts of the enactments for courts of request in the native armies of the three presidencies, and your Minutes upon their various clauses. I have also gone through such of the papers accompanying as appeared to require immediate consideration.

I would beg to observe that, in my opinion, the course now most advisable, as likely to produce the desired information or suggestions calculated to render the enactment as complete as possible, in the mode most to be depended upon, and in the shortest period of time, is, to transmit to the military authorities of the different presidencies copies of the two draft Acts, accompanied in each case by copies of such of the papers as have come up from the other presidencies, and to forward them with a letter embodying all the remarks and points contained in your Minutes on both the draft Acts. It appears to me also that the provisions of the two Acts might very conveniently be combined in one enactment.

It is, I think desirable that each of the Judge Advocates General should be requested to prepare an appendix of rules of detail, for the guidance of courts of request and commissariat officers. The valuable suggestions which might be expected to result from this requisition, would probably admit of easy combination and arrangement, applicable to all the presidencies.

I proceed to submit such few remarks as have occurred to me on consideration of the draft Acts.

Draft Act for Military Courts of Request, &c. &c.

Clause 3. I doubt the expediency of investing the courts of request, &c. with the powers of punishment here given. For non-attendance, or reluctance of witnesses, and for perjury, it appears to me incompatible with the nature and duties of courts of request that such courts should possess the power to punish. Regarding the first of these offences, non-attendance, it would in general be out of the power of such a court to exercise such jurisdiction; and the articles of war might be made to provide for this contumacy in general, when committed in the case of courts of request, as in the case of courts martial.

Regarding the second branch of offence, reluctance to give evidence, the same provision might be made in the articles of war; and for the punishment of perjury, the articles of war do already provide, as committed before any court entitled to administer on oath, which included courts of request. The provision, however, should

should be made to embrace perjury committed before the commissariat officer also, who is entitled by this draft Act to try small suits.

The essential attribute of a court of requests seems to me to be this, that its consideration and its decision shall exclusively relate to the actions of debt, and personal actions, for the cognizance of which it is established. But if such a court is authorized to enter into considerations of contumacy of witnesses or perjury, in the light of offences criminally punishable by itself, a door is opened to much extraneous proceeding, and a handle given to insinuations of doubt as to the impartiality of decrees made by the court. In the case of all military courts, I should incline strongly to discourage the practice of punishing witnesses, or proceeding any further with them than to commit them for trial and sentence by another court martial. It is well that they should be empowered by the articles of war, as they are, to punish witnesses for contumacy or perjury, because it may happen to be desirable so to do; but in by far the greater number of cases, no such summary procedure is necessary, and it appears to me that the dignity of a court martial, especially as regards the ostensible purity and impartiality of its verdict, is likely to be sustained by transferring the cognizance of these offences to a new court. To a court of requests the sentiment I have endeavoured to express would seem to apply with much greater force.

For mere contempts, however, which though they disturb, do not relate to the suit before the court, I see no objection to giving jurisdiction to a court of requests for such offences committed in court.

Clause 5. Is it intended here that the commissariat officer shall administer an oath to witnesses in suits tried before him? If so, which appears to me desirable, a provision to that effect would seem necessary.

Is it intended that the commissariat officer shall take the prescribed oath every month, or on every occasion of trying suits, or when he assumes office? The latter is, in my opinion, the best time to take the oath once for all, whenever a commissariat officer shall become senior at a station for the purposes of the Act.

Clause 8. This invests the commissariat officer with the same powers as are previously conferred on courts of request; and for the same reasons the objections I have already stated would appear to apply to this clause.

Clause 9. In a preceding clause (7), the commissariat officer is directed to furnish a monthly return of his proceedings and decisions; but if the latter are liable to revision, that should take place as soon as possible after they are made. To wait for a month would often defeat the object, or render impossible the effecting of a revision. It would be an improvement, and not attended with any inconvenience, that returns should be made of decisions without delay, in the same manner as courts of request are by this Act required to furnish a copy of their proceedings.

Clause 10. This appears to give an unlimited power of ordering revision. I think it would be well to restrict the commanding officer to one revision, and to empower him, in case the court or the commissariat officer adhere to their unsatisfactory decree, to send the suit up to a new court of requests (the next month, for instance), the decree of which new court to be final, unless palpably illegal.

Clause 11. The direction to record proceedings (which I presume means that the evidence as well as the suit and decree shall be recorded at length, otherwise the commanding officer will be in the dark as to the merits of the case), is a great improvement on the present practice, and the power of directing revision conferred by this clause, appears to me a very necessary provision.

Clause 12. The seizure and sale authorised by this clause, should I think be distinctly and expressly placed within the competency of the commanding officer of the station. It is implied perhaps by the clause as it stands, but to state it in words would be an improvement.

With regard to the imprisonment of arrested debtors here contemplated, there are no suitable places in the military stations in this presidency. I would suggest therefore that the words "situate within the limits of the station or cantonment," be taken out, and that it be permitted to send such debtors to the civil gaols in the respective neighbourhoods.

Clause 13. It does not appear by whose order the stoppages are to be made. The paymaster will require authority to make them. Perhaps the commanding officer's certificate of the decree, and of his own decision that it should be met by stoppages, would suffice, and be the readiest mode of authorising stoppages by the paymaster.

No. III.-Part 2. Military Courts of Request.

Clause 17. The same remark applies to the seizure here contemplated. The commanding officer should be distinctly authorized.

These remarks are all that it occurs to me to submit on this occasion. I have abstained from going into the more important parts of the subject, because it appears to me the particular province of the Judge Advocates General (under the orders of the several Commanders-in-chief) to enter into these parts of the contemplated Acts; and upon the suggestions and information which the reference I have proposed will elicit, I hope to have a subsequent opportunity of stating more at large what considerations may suggest themselves to me, and I should then be able to do so in a manner more likely both to satisfy myself, and to conduce towards the efficiency of the Act, than if I were now to enter upon them.

I beg to return the box, with all the papers you sent me.

Yours, &c.
(signed) *William Casement.*

Legis. Cons. 12 August 1839. No. 34.

From General *Casement* to the Honourable *A. Amos*, Esq., dated the 23d April 1839.

My dear Mr. Amos,

THE clauses of the draft Act for courts of request appear to me now well calculated for the purpose, but I think two little alterations would improve the 3d and the 8th clauses.

To the former, I would propose to add a few words (in order to give a concurrent jurisdiction to courts of request and courts martial over contempts or disturbances committed in presence of the former), in words to the following purport: "and that as regards the other offences herein above stated, the offender shall be punished as aforesaid, either by the summary judgment of the court, or by the sentence of a general or other court martial."

My object in this suggestion is, to avoid the possibility of a commissioned officer being punished by a court of requests.

In clause 8, I would propose to insert after court, the words "of such commissariat officer;" and the clause might, I think, more briefly conclude thus, "shall be the same as are hereinbefore provided for the observance of military courts under this Act."

If this suggestion be not adopted, it will be desirable to add to the proviso in this clause a few words relating to contempts of courts, similar to those before suggested in the case of courts of request.

With regard to the draft of proposed terms of reference to the military authorities, they appear to me very completely adopted to elicit the desired information.

Perhaps it might be advisable not to say (as in the closing part of clause 5) that offences by witnesses are of a nature more fit for the investigation of a civil than of a military court. The articles of war make such offences by amenable witnesses punishable by courts martial, excepting only such persons at all as are not amenable; and it is quite customary in the army to try men for non-attendance, perjury, &c. as well-understood military offences.

In clause 6, I would propose to insert (as a subject among those enumerated as requiring consideration) the suing by representative in such instances as tradesmen of Calcutta suing debtors at the mofussil stations. This is a branch of the subject on which much contrariety of practice has obtained.

I am, &c.
(signed) *William Casement.*

Legis. Cons. 12 August 1839. No. 35.

NOTE by the Honourable *A. Amos*, Esq., dated the 8th of May 1839.

IN consequence of the opinions expressed in Council with reference to suits in military courts of request beyond the frontier, suggested by a case at Baroda, in which a person, not an officer or soldier, but apparently residing within a cantonment, was cast for a debt amounting to 44,500 rupees, I have added to the draft Act a proviso for giving a right of appeal in suits beyond the frontier, where the amount recovered exceeds 400 rupees.

In

No. III.-Part 2.
Military Courts of Request.

In the terms of reference, I have added a paragraph (para. 10), requesting the opinions of the military authorities upon this subject, especially with regard to any provisions with which it may be thought that the power of appeal should be accompanied.

The principle of an appeal to a civil court being entirely new, it must be expected that the details incident to the appeal cannot be disposed of in the short way proposed in the draft; they are not likely, however, to occasion any difficulties of consequence.

The Law Commissioners recommend that beyond the frontier, the jurisdiction should be limited in amount. The Regulations of the different presidencies are not more uniform upon this point than upon almost every other point touching military courts. The liability in consequence of residence within a cantonment is a *vexata questio*. The Baroda case also presents various other points of questionable jurisdiction.

(signed) *A. Amos.*

Draft of Act.

Legis. Cons. 12 August 1839. No. 36. Legislative Dept.

Fort William, 20 May 1839.

1. It is hereby enacted, that within the territories of the East India Company, actions of debt and all personal actions against native officers, non-commissioned officers, soldiers, and other persons amenable to the articles of war for the native forces in the military service of the East India Company; persons registered as attached to sudder bazaars or bazaars of corps, and following at the time their occupations in respect of which they are so registered, or menial servants of officers belonging to such forces, shall be cognizable before a military court, and not elsewhere, except as hereinafter mentioned; provided the value in question shall not exceed 400 rupees, and the defendant was a person of the description above mentioned when the cause of action arose, and when the suit was instituted.

2. And it is hereby enacted, that the commanding officer of any station or cantonment is authorized to convene such military courts. And such courts shall be composed, according to the order of the Commander-in-chief or commanding officer of the forces of the presidency within which the station or cantonment is situate, or in the absence of such orders, according to the discretion of the convening officer, either of not less than three European commissioned officers, or of not less than three native commissioned officers, with an European officer to superintend and record the proceedings.

3. And it is hereby enacted, that the procedure in such military courts, including the appointment of an interpreter, the oaths to be taken by the members of the court, by the superintending officer, and by the interpreter, and the rules and provisions as to the hours for the sitting of the court, for the summoning and examination of witnesses, for the manner of voting, for punishing non-attendance, refusing to give evidence, or perjury as a witness, or using menacing words, signs, or gestures in the presence of the court, or causing any disorder or riot so as to disturb its proceedings, shall be the same as prescribed by the articles of war in the case of courts martial; provided that as regards the offences of non-attendance, refusal to give evidence, and perjury as a witness, the offenders, if amenable to the articles of war, shall be tried and punished by a general or other court martial, subject to all the rules contained in the articles of war for the administration of justice by courts martial, and that in regard to the other offences hereinbefore in this section mentioned, the offender shall be punished as aforesaid, either by the summary judgment of the court, or by the sentence of a general or other court martial.

4. And it is hereby enacted, that such military courts shall be convened monthly, and shall be holden on some convenient day before the issue of the pay for each month; and that after the conclusion of each case, a copy of the proceedings, including the evidence and decree therein, shall be furnished to the officer commanding the station or cantonment, by the president of every such court.

5. And it is hereby enacted, that at all stations where military bazaars are established, suits for the recovery of any debt not exceeding 20 rupees, in which the defendant at the time the cause of action arose, as well as at the period of the institution of the suit, was a person belonging to any of the descriptions before mentioned, shall be brought before the officer commanding at such station, who may, by written order, refer them to the senior commissariat officer at such station,

No. III.-Part 2.
Military Courts of Request.

who is hereby invested with authority to determine all such suits; or may at his discretion direct them to be tried by a court of requests.

6. The senior commissariat officer as aforesaid, on his becoming such officer, and previously to acting under any such reference as aforesaid, shall take and subscribe the following oath before such commanding officer as aforesaid, who is hereby authorized to administer the same:—

Oath.

I, *A. B.* solemnly swear that I will try and determine all suits referred to me under Act of 1839, to the best of my ability and judgment, without partiality, favour, or affection, and that I will not directly or indirectly receive or knowingly allow any other person to receive for me any money or effects of any kind on account of any suit that may come before me for decision, or shall have been decided by me. I will strictly adhere to all the rules prescribed for my guidance, and I will, in all respects, truly and faithfully execute the trust reposed in me.

7. And it is hereby enacted, that the senior commissariat officer as aforesaid, in trying suits falling under his cognizance, shall have power to administer oaths or solemn affirmations to the witnesses, and shall record his proceedings and his decree in writing in the English language; and after the conclusion of each case a copy of the proceedings and decree therein shall be furnished by such commissariat officer to the officer commanding the station or cantonment.

8. And it is hereby enacted, that the rules and provisions as to the hours for the sitting of the court for the summoning and examination of witnesses, for punishing non-attendance, refusing to give evidence, or perjury of a witness, or for using menacing words, signs, or gestures in the presence of the court or such commissariat officer, or causing any disorder or riot so as to disturb its proceedings, shall be the same as prescribed by the articles of war in the case of courts martial; provided that as regards the trial and punishment of the offences in this section mentioned, the same rules shall be observed as are hereinbefore prescribed in section 3 of this Act.

9. And it is hereby enacted, that the officer commanding at any station or cantonment, upon being furnished with copies of the proceedings, including the evidence and decree, of any military court of such senior commissariat officer, shall pass his orders thereon, either for a revision of the decree or for the execution thereof.

10. And it is hereby enacted, that the officer commanding as aforesaid, to whom such copy of any decree shall have been furnished as aforesaid, is authorised to remit the same for revision if he shall be dissatisfied with such decree, either upon any matter of form or upon the merits, to the authority passing such decree, or to any military court constituted as aforesaid; and he shall have the like power in respect of any subsequent decree in the same matter.

11. And it is hereby enacted, that if the commanding officer shall be satisfied with any such decree, he shall countersign the copy thereof furnished to him, and shall direct whether the execution shall be general or shall be satisfied out of the pay of the debtor and of public money that may be due to him; such direction shall be in writing, and signed by the commanding officer.

12. And it is hereby enacted, that where the execution is directed to be general, the debt, if not paid forthwith, shall, under the authority of the commanding officer in writing, signed by him, be levied by seizure and public sale of such of the debtor's property as may be found within the limits of the station or cantonment; and if sufficient goods are not found within the limits of the station or cantonment, the debtor shall be arrested and imprisoned in any civil gaol near to the station or cantonment, or in any other convenient place of confinement (such place to be designated in the directions of the commanding officer) situate within the limits of the station or cantonment, for the space of two months, unless the debt be sooner paid; and his goods, if found within the limits at any subsequent time, shall be liable to be seized and sold in satisfaction of the debt.

13. And it is hereby enacted, that if the commanding officer shall direct the execution to be satisfied out of the pay of the debtor, the whole or any part of such pay or public money, or both, according to the terms of such direction, which may be coming to the debtor, either in the current or any future month, shall be stopped and paid over to the creditor; and a certificate of the decree and direction

tion thereon, under the hand of the commanding officer, and signed by him, shall be a sufficient authority for making such stoppages.

14. And it is hereby enacted, that where suits may be brought in a military court of requests upon several notes, bonds, or other securities, or upon several demands of a different nature, such suits shall be cognisable by such military court, provided the amount claimed in respect of each security, or in respect of each demand shall not exceed the sum of 400 rupees.

15. And it is hereby enacted, that no suit shall be brought in any military court, or any commissariat officer, for any demand where the cause of action shall not have arisen within six years from the time of instituting the suit.

16. And it is hereby enacted, that upon any suit being brought before any military court or any commissariat officer, it shall be lawful for such court or officer, and he is hereby required to investigate any counter-claim or set-off which the defendant may allege that he is entitled to against the plaintiff, and to allow the plaintiff only what may be due to him after such deductions.

17. And it is hereby enacted, that in case of any general execution against a defendant, it shall be lawful, on failure of payment, under the authority of the commanding officer, in writing signed by him, to seize any goods which he may hold in his possession by way of pawn or mortgage, and the same shall be delivered to the plaintiff, subject to all such rights as the owners thereof had against the defendant at the time of the seizure of the same.

18. And it is hereby enacted, that such actions of debt and personal actions as aforesaid arising beyond the frontier, may be brought before such military courts as aforesaid at any station or cantonment beyond the frontier of the territories of the East India Company, for any amount of demand; provided that such military courts beyond the frontier shall be composed of European officers, and that in case of any claim not being satisfied, imprisonment shall not be awarded for a longer term than six months, or in case the debtor shall be proved to have been guilty of fraudulent or dishonest conduct, for a longer term than two years: provided also, where the sum received shall exceed 400 rupees, an appeal shall lie to the Court of Sudder Dewannee Adawlut of the nearest presidency, according to the same rules as are in force with regard to appeals to that court from subordinate civil courts; where the amount in dispute does not exceed 30 rupees, the cause may be tried and determined beyond the frontier, by such commissariat officer as aforesaid, in like manner as suits within the frontier are tried and determined by such officer.

19. Provided that nothing in this Act contained shall be construed to repeal or affect any Regulation or part of Regulation touching the trial of suits at military bazaar stations by punchayet.

DRAFT of INSTRUCTIONS to the Three Presidencies, dated the 22d April 1839.

Legis. Cons. 12 August 1839. No. 37.

1. THE military authorities of the different presidencies are requested to consider the draft Act herewith sent, together with the accompanying papers containing suggestions for the improvement of courts of request for the recovery of debts against military persons, and of the administration of justice by commissariat officers, with a view to forming a general and amended system of law upon this subject, applicable to all the presidencies. Their attention is also particularly requested to the statute 4 Geo. 4, c. 81, and to the Regulations of the several presidencies, sent herewith.

2. It will be observed that in the Regulations of the several presidencies there is a want of uniformity upon the following points; viz.—1. The species of action which may be tried before the military tribunals in question; 2. The amount recoverable; 3. The descriptions of persons against whom suits may be brought; 4. The point whether the defendant must have been a military man at the time when the cause of action arose, as well as when the suit was brought; 5. The jurisdiction of military courts of request within the limits of the courts of request established in the presidency towns; 6. The persons convening courts of request; 7. The persons composing the courts; 8. The forms of procedure; 9. The execution of decrees; 10. Rules to be pursued beyond the frontier. And it will be noticed that discrepancies upon most of the above matters occur both in respect of military courts of request, and also of the administration of justice in civil suits by commissariat officers. The military authorities are requested to

No. III.–Part 2.
Military Courts of Request.

give their opinion upon each of the above matters, and to state, in respect of each of them, their reasons for preferring, in a general system, the rule of one presidency in preference to that of another, or their reasons for considering that a general rule in regard to any particular matters could not be conveniently adopted for all the presidencies; and also to offer such observations as they may think proper concerning the amendments of the existing Regulations proposed in the draft and the various papers, or which may occur to themselves.

3. Particular attention is requested as to the point whether the punchayet system of Madras should be extended to the other presidencies, and whether the provisions in the draft respecting the administration of justice in civil suits by commissariat officers, and which are taken from the Madras and Bombay Regulations, can be conveniently extended to Bengal.

Attention is requested to a matter which is much urged in the papers from Madras, respecting the limiting of credit to be given in military bazaars. Difficulties appear to occur in limiting the amount recoverable in the military courts, without at the same time admitting the great inconvenience of any credit in excess being recoverable in the civil courts; the principle hitherto adopted having been, that parties were precluded from suing military men in the civil courts only in cases in which a prompt remedy was open to them in the military courts. In making any provisions for limiting credit given by a particular individual to a military man, it must be obvious that it will be difficult to prevent an extended credit being fraudulently given, in a manner so as to make it appear that the extended credit has been given by a different individual; should the military authorities be of opinion that credit in bazaars ought to be, and can be conveniently restricted, it will be advisable that they should point out the most effectual and least objectionable way of accomplishing this object.

4. In adverting to the new provisions of the draft, it will be important to ascertain the opinion of the military authorities as to the propriety of allowing the commanding officer, in addition to his power of refusing to execute a decree, the power of sending it back to the same or another tribunal, once, oftener, or an unlimited number of times.

5. In regard to the punishment of persons amenable to the articles of war, for not attending as witnesses, refusing to give evidence, or committing perjury, it will be important to ascertain the most convenient mode of punishing such offences. On the one hand there is a great convenience in the delinquency being punished promptly by the tribunal before which it arises; but on the other, neither courts of request nor the commissariat officer appears to be so competent to deal with offences of such a nature as courts martial generally are. It may, perhaps, be thought by some that courts martial even are not a very fit tribunal for such purposes, and that if the courts of request and the commissariat officer are not to have jurisdiction, on the ground that the offences are incident to their proceedings, it may be the best course to transfer the offenders to the civil tribunals. The nature of the offences is not better suited for investigation by a military than by a civil court, but the distance of the proper civil court may prove an inconvenience to the military service.

6. Besides the rules of procedure before military courts which have been laid down in the Regulations, there are various details of a minuter description, which are noticed in General Orders, or suggested in the various papers sent herewith, such as regard attendance of parties by representatives, interrogatories to distant witnesses, the swearing of the parties, the non-appearance of the parties, the interval of time allowed for the summoning of witnesses, and the like. It would be very desirable to embody, in one uniform system, the most expedient provisions of this nature that may be suggested by the military authorities of the several presidencies.

7. The like observations, as in the last paragraph, are applicable to various rules of evidence or practice; in regard, for example, to the proof of contracts, as requiring them to be in writing, and in the languages of both the contracting parties, or the practice of the court in allowing a particular rate of interest.

8. It will be observed that the provisions in the Regulations concerning the recovery of debts before commissariat officers, are to be found in connexion with a multitude of miscellaneous provisions concerning military bazaars and cantonments. It may be a question for consideration, how far the proposed Act should incorporate any of the provisions respecting bazaars and cantonments, which are so far applicable to the subject of the Act, as they designate the limits of its operation

operation as to persons and places, or explain the capacity and jurisdiction of the commissariat officer.

9. It will deserve consideration, whether, in the proposed Act, the subject of the protection of military persons from suits in the civil courts, should be particularly entered into, and if this be thought advisable, whether the existing provisions upon the subject have, in practice, been found adequate.

10. On the subject of the recovery of debts beyond the frontier, particular attention is requested to the existing Regulations, and to the power of appeal which is proposed to be given in certain cases, both as regards the conferring of such a power, and the limitations and provisions by which it ought to be accompanied, and the tribunal to which the appeal ought to lie.

11. On the subject of punchayets, if it shall be thought advisable to include them in the present Act, it would be advisable that draft clauses should be furnished, incorporating the provisions in the Regulations, the principal decisions of the Madras Sudder Court, and the various amendments suggested, by means of which the law may be expressed in a compendious and improved form.

(signed) *A. Amos.*

(No. 320.)

Legis. Cons. 12 August 1839. No. 38.

From *J. P. Grant*, Esq. Officiating Secretary to the Government of India to *T. H. Maddock*, Esq. Officiating Secretary to the Government of India with the Governor-general.

Sir,

I AM directed by the Honourable the President in Council to forward to you, for submission to the Right Honourable the Governor-general, the accompanying original papers as noted in the margin*, on the subject of a proposed enactment for the better administration of justice in military courts of request in all three presidencies.

2. It will be observed that the question was originally brought to the notice of the government of India by the government of Fort St. George, in their Chief Secretary's despatch, dated 1st December 1835, and proposed for the consideration of the Indian Law Commission. Enclosed with this letter, amongst other papers, is a letter from the register of the Madras Foujdaree Adawlut, dated the 20th of November 1835, in which will be found a statement of the circumstances which had suggested to the Madras authorities the propriety of various modifications of Regulation VII. of 1832 of the Madras Code, and an explanation of the modifications proposed.

3. On the 22d November 1836, the Madras government submitted also, for reference to the Law Commission, extracts from a resolution recorded by the government on the 13th August 1833 on a previous communication from the Court of Foujdarry Adawlut. On that occasion the local government expressed an opinion that a summary appeal to the zillah judge should be allowed, in the event of the military court or punchayet exceeding their jurisdiction. The Honourable

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* Letter from the Chief Secretary to the Government of Fort St. George, dated 1st December 1835, with one Enclosure.
Letter from the Chief Secretary to the Government of Fort St. George, dated 22d November 1836, with one Enclosure.
Extract Political Department, dated 30th January 1837.
Letter to the Secretary to the Indian Law Commission, dated 8th May 1837.
Extract Military Department, dated 16th October 1837, with one Enclosure.
Extract Military Department, dated 20th October 1837.
Resolution of the government of India in the Legislative Department, dated 6th November 1837.
Letter from the Secretary to the Indian Law Commission, dated 15th June 1838.
Letter from the Officiating Secretary to the Governor-general North West Provinces, dated 13th October 1838.
Extract Military Department, dated 18th June 1838, with two Enclosures.
Extract Military Department, dated 8th October 1838, with five Enclosures.
Minute by the Hon. Mr. Amos, dated 19th December 1838, with draft of Act enclosed.
Minute by the Hon. A. Amos, Esq., without date, with another draft of Act enclosed.
Minute by the Hon. A. Amos, Esq., dated 27th December 1838, with a draft of Act enclosed.
Note by the same, dated 2d February 1839.
Letters from Major-general Casement to Mr. Amos, dated 20th and 23d April 1839.
Note by the Hon. Mr. Amos, dated 8th May 1839.
Draft Act, dated 20th May 1839.
Proposed Letter to the Military Authorities of the three Presidencies.

No. III.–Part 2.
Military Courts of Request.

nourable the Court of Directors expressed their concurrence in this point of view in paragraph 171 of their despatch to the Madras government, dated 30th September 1835, No. 6, a copy of which paragraph accompanied the above resolution.

4. On the 30th January 1837 an extract from the proceedings of this government in the Political Department was received, with certain communications from the resident at Nagpore; and also correspondence which passed between the government of India and the Madras government, on a suggestion that in the modification of Regulation VII. of 1832 of the Madras Code as before proposed, a clause should be introduced for the purpose of providing for the trial of suits for real property situated within the cantonments beyond the British frontier.

5. The several papers above noticed were from time to time transmitted to the Indian Law Commission for consideration.

6. An extract from the Military Department, under date the 16th October 1837, was forwarded to this office, with a further communication from the Madras government on the subject of the Regulations for the recovery of debts due from the native soldiery at that presidency, and a resolution of the government of India thereon, to the effect that the expediency of making the proposed or other changes would be taken into consideration in this department.

7. A further extract from the said department, dated the 20th of the same month, was received for the same purpose, with the draft of a code of rules for the guidance of military courts of request, prepared in the Adjutant-general's office at this presidency.

8. In reply to these extracts, information was communicated to the Military Department, that the proposed Regulation for the guidance of military courts of request, which purported to cancel all existing Regulations on that subject at variance with itself, being clearly matter of legislation, could not be passed by the government in its executive capacity; that the measures to be adopted with this object would be made general, embracing the soldiery all over India; and that the military authorities at the several presidencies would be called upon to furnish the Legislative Department with the necessary information for enabling the government to frame an enactment comprehending the whole subject.

9. The Law Commission replied to the communication that had been addressed to them, by their secretary's letter of 15th June 1838, in which they noticed successively, with an expression of their own opinion upon each point, the several suggestions of the Commander-in-chief at Madras, and the resolutions of the Madras government passed on the 13th of August 1833, and approved by the Honourable Court. From this communication his Lordship will readily gather the chief points for consideration.

10. The Law Commissioners observed, that they inferred from the tenor of the letters with which these questions had been referred to them, that it had been the intention of government that they should be taken up in the course of the general revision of those branches of the law with which they are connected. But that they had nevertheless been induced to submit this Report, from a knowledge that a draft of new articles of war for the native troops, including rules for military courts of request, was then under the consideration of government.

11. The officiating secretary to the Governor-general for the North-western Provinces submitted, with his letter of 13th October last, a petition from Mr. J. Rawlins, a resident at Agra, complaining of the illegality of an ex-parte judgment passed against him by the military court of requests at that station, to which he alleged he was not amenable. The object of his Lordship in handing up the petition to the government of India was, that the several points therein noticed might meet such attention as they deserve, in considering the general rules for the guidance of the military courts of request then under discussion in this department.

12. A letter from the secretary to the government of Bombay, with a copy of the Regulations by which military courts of request are governed at that presidency, was transferred to this department from the Military Department on the 18th June last, with reference to the extract from this department, dated the 6th November 1837.

13. With another extract from the same department, dated the 8th of October last, this department received a report from the Judge Advocate-general of the Madras army upon the laws and regulations regarding military courts of request and courts martial for civil suits.

14. The subject has received much attention from the fourth ordinary member of

of Council, to whose minutes, dated as noted in the margin, you are requested to refer his Lordship. Amongst the papers herewith forwarded will be found two notes from Major-general Sir W. Casement, who was consulted on this occasion by Mr. Amos.

19 Dec. 1838.
No date, 1838.
27 Dec. 1838.
2 February 1839.
8 May 1839.

15. The whole matter has been incorporated into one Draft Act, which it is in the contemplation of the President in Council to circulate to the military authorities at the three presidencies, with a letter calling for their opinions, and any suggestions they may have to offer on the several provisions of the proposed Act. The substance of the letter with which it is proposed to circulate the draft Act will be seen in the paper hereto appended. The President in Council begs to call the attention of the Right honourable the Governor-general to this paper, and to request his Lordship's sentiments thereon, as well as on the several provisions of the Draft Act, before circulation or publication.

16. You are requested to return the original papers with the draft of Act, with your reply.

I have, &c.

Fort William, 20 May 1839. (signed) *J. P. Grant*,
Offg Secy to Govt of India.

From *T. H. Maddock*, Esq. Officiating Secretary to the Government of India, with the Governor-general, to *J. P. Grant*, Esq. Officiating Secretary to the Government of India.

Legis. Cons.
12 August 1839.
No. 39.

Sir,

Legislative.

I AM directed to acknowledge the receipt of your two letters of the dates and subjects noted in the margin;* and in reply to communicate as follows.

2. On the subject of the article of war for the native army, the Governor-general has recorded a minute containing such observations as have occurred to him with reference to the points on which Mr. Amos has invited discussion. A copy of that document is enclosed for submission to the Honourable the President in Council.

3. On the subject of the draft of Act for the better administration of justice in military courts of request, the Governor-general has studied with much attention, and his Lordship can suggest no better method of throwing light on the many points with regard to which doubts may be entertained, or of endeavouring to reconcile the differences in law and in practice which prevail in the military courts of request at the three presidencies, than that of issuing the circular which has been approved by the Honourable the President in Council, and his Lordship would wait for the returns to that circular before entering into any observations on the many points which are open to discussion.

4. On the present occasion, his Lordship has only to remark with regard to the request of attention to the 4 Geo. 4, c. 81, that this statute is about to be repealed and re-enacted, with alterations and amendments; and that, in his opinion, a solemn declaration is to be preferred to an oath, in the case of a commissariat officer, exercising judicial functions, should an oath be not indispensable under the provision of section 57 of the above-mentioned statute, which directs that the members of a court of requests, being Europeans, shall be sworn on the Holy Evangelists.

5. The Governor-general, however, would not, even for the present, take leave of the subject without gratefully acknowledging the soundness of the views and the laborious attention with which the fourth member of the Council has pointed out and endeavoured to overcome the difficulties of the proposed Act.

6. The original papers received with your letter, No. 320, are herewith returned.

I have, &c.

Simla, 4 July 1839. (signed) *T. H. Maddock*,
Offg Secy to the Govt of India with the Govr-general.

* Letter, No. 324, dated 20th May 1839, with Enclosures on the subject of the enactment of articles of war for the discipline of the native army.

Letter, No. 320, dated 20th May 1839, on the subject of a proposed enactment for the better administration of justice in military courts of request in all the three presidencies of Bengal, Madras, and Bombay, with Enclosures.

No. III.-Part 2. Military Courts of Request.

Legis. Cons. 2 August 1839. No. 45.

RESOLUTION.

FORT WILLIAM, Legislative Department, 12th August 1839.

READ again, Letter from Chief Secretary, Government of Fort St. George, dated 1st December 1835, No. 927, with Enclosure.

Letter from Chief Secretary, Government of Fort St. George, dated 22d November 1836, No. 981, with Enclosure.

Extract Political Department, Government of India, dated 30th January 1837, No 16, containing Correspondence with Government of Fort St. George; viz. Letter from Mr. Chief Secretary Chamier, dated 9th January 1837, and from Mr. Secretary Macnaghten, in reply, dated 30th January 1837, and other papers.

Letter to Officiating Secretary, Indian Law Commission, dated 8th May 1837, No. 129.

Extract Military Department, Government of India, dated 16th October 1837, No. 224, with Enclosure, containing Letters from Military Secretary, Government of Fort St. George, of 2d August and 8th November 1836.

Extract Military Department, Government of India, dated 20th October 1837, No. 335.

Resolution of the Legislative Council, dated 6th November 1837, No. 17.

Read, Letter from Secretary, Indian Law Commission, dated 15th June 1838, No. 140.

Extract Military Department, Government of India, dated 18th June 1838, No. 285, containing Letter from Military Secretary, Government of Bombay, dated 22d May 1838, with Enclosure.

Letter from Officiating Secretary to the Governor-general, North-western Provinces, dated 13th October 1838, No. 2698.

Extract Military Department, Government of India, dated 8th October 1838, No. 180, containing Letter from Military Secretary, Government of Fort St. George, dated 11th September 1838, with four Enclosures.

Minute by the Honourable Mr. Amos, dated 19th December 1838, with draft of Act.

Minute by the Honourable Mr. Amos, no date, 1838, with draft of Act.

Minute by the Honourable Mr. Amos, dated 27th December 1838, with draft of Act.

Minute by the Honourable Mr. Amos, dated 2d February 1839.

Note I. by Major-general Sir William Casement, dated 20th April 1839.

Note II. by Major-general Sir William Casement, dated 23d April 1839.

Minute by the Honourable Mr. Amos, dated 8th May 1839.

Draft of proposed Act.

Draft of proposed Instructions.

Letter to Officiating Secretary, Government of India, with the Governor-general, dated 20th May 1839, No. 320.

Letter from Officiating Secretary, Government of India, with the Governor-general, dated 4th July 1839.

Resolution.—The Honourable the President in Council resolves that the military authorities of the different presidencies be requested to consider the draft Act, together with the papers noted at the foot of this resolution, containing suggestions for the improvement of courts of request for the recovery of debts against military persons, and of the administration of justice by commissariat officers, with a view to forming a general and amended system of law upon this subject, applicable to all the presidencies. Their attention should also be particularly requested to the statute 4 Geo. 4, c. 81, and to the Regulations of the several presidencies sent herewith.

2. It will be observed that in the Regulations of the several presidencies there is a want of uniformity upon the following points; viz. 1, the species of action which may be tried before the military tribunals in question; 2, the amount recoverable; 3, the descriptions of persons against whom suits may be brought; 4, the point whether the defendant must have been a military man at the time when the cause of action arose, as well as when the suit was brought; 5, the jurisdiction of military courts of request within the limits of the courts of request established

established in the presidency towns; 6, the persons convening courts of request; 7, the persons composing the courts; 8, the forms of procedure; 9, the execution of decrees; 10, rules to be pursued beyond the frontier. And it will be noticed that discrepancies upon most of the above matters occur both in respect of military courts of request, and also of the administration of justice in civil suits by commissariat officers. The military authorities will be requested to give their opinion upon each of the above matters, and to state in respect of each of them their reasons for preferring, in a general system, the rule of one presidency in preference to that of another, or their reasons for considering that a general rule in regard to any particular matters could not be conveniently adopted for all the presidencies; and also to offer such observations as they may think proper concerning the amendments of the existing Regulations proposed in the draft and the various papers, or which may occur to themselves.

3. Particular attention will be requested as to the point whether the punchayet system of Madras should be extended to the other presidencies, and whether the provisions in the draft respecting the administration of justice in civil suits by commissariat officers, and which are taken from the Madras and Bombay Regulations, can be conveniently extended to Bengal.

4. Attention will be requested to a matter which is much urged in the papers from Madras respecting the limiting of credit to be given in military bazaars. Difficulties appear to occur in limiting the amount recoverable in the military courts, without at the same time admitting the great inconvenience of any credit in excess being recoverable in the civil courts; the principle hitherto adopted having been, that parties were precluded from suing military men in the civil courts only in cases in which a prompt remedy was open to them in the military courts. In making any provisions for limiting credit given by a particular individual to a military man, it must be obvious that it will be difficult to prevent an extended credit being fraudulently given in a manner so as to make it appear that the extended credit has been given by a different individual. Should the military authorities be of opinion that credit in bazaars ought to be and can be conveniently restricted, it will be advisable that they should point out the most effectual and least objectionable way of accomplishing this object.

5. In adverting to the new provisions of the draft, it will be important to ascertain the opinion of the military authorities as to the propriety of allowing the commanding officer, in addition to his power of refusing to execute a decree, the power of sending it back to the same, or another tribunal once, oftener, or for an unlimited number of times.

6. In regard to the punishment of persons amenable to the articles of war for not attending as witnesses, refusing to give evidence, or committing perjury, it will be important to ascertain the most convenient mode of punishing such offences. On the one hand, there is a great convenience in the delinquency being punished promptly by the tribunal before which it arises; but, on the other, neither courts of request, nor the commissariat officer, appear to be so competent to deal with offences of such a nature as courts martial generally are. It may probably be thought by some that courts martial even are not a very fit tribunal for such purposes, and that if the courts of request and the commissariat officer are not to have jurisdiction, on the ground that tho effences are not incident to their proceedings, it may be the best course to transfer the offenders to the civil tribunals. The nature of the offences is not better suited for investigation by a military than by a civil court, but the distance of the proper civil court may prove an inconvenience to the military service.

7. Besides the rules of procedure before military courts, which have been laid down in the Regulations, there are various details of a minuter description, which are noticed in general orders, or suggested in the various papers noted at the head of this resolution, such as regard attendance of parties by representatives, interrogatories to distant witnesses, the swearing of the parties, the non-appearance of the parties, the interval of time allowed for the summoning of witnesses, and the like. It would be very desirable to embody in one uniform system the most expedient provisions of this nature that may be suggested by the military authorities of the several presidencies.

8. The like observations, as in the last paragraph, are applicable to various rules of evidence or practice; in regard, for example, to the proof of contracts, as requiring them to be in writing and in the languages of both the contracting parties, or the practice of the court in allowing a particular rate of interest.

No. III.–Part 2.
Military Courts of Request.

9. It will be observed, that the provisions in the Regulations concerning the recovery of the debts before commissariat officers, are to be found in connexion with a multitude of miscellaneous provisions concerning military bazaars and cantonments: it may be a question for consideration how far the proposed Act should incorporate any of the provisions respecting bazaars and cantonments, which are so far applicable to the subject of the Act as they designate the limits of its operation as to the persons and places, or explain the capacity and jurisdiction of the commissariat officer.

10. It will deserve consideration, whether, in the proposed Act, the subject of the protection of military persons from suits in the civil courts should be particularly entered into, and, if this be thought advisable, whether the existing provisions upon the subject have in practice been found adequate.

11. On the subject of the recovery of debts beyond the frontier, particular attention will be requested to existing Regulations, and to the power of appeal which is proposed to be given in certain cases, both as regards the conferring of such a power, and the limitations and provisions by which it ought to be accompanied, and the tribunal to which the appeal ought to be.

12. On the subject of punchayets, if it shall be thought advisable to include them in the present Act, it would be desirable that draft clauses should be furnished incorporating the provisions in the Regulations, the principal decisions of the Madras Sudder Court, and the various amendments suggested, by means of which the law may be expressed in a compendious and improved form.

Ordered, that copies of the foregoing resolution, and of the papers noted in the margin,* being such as are not on record in that department, be forwarded to the Military Department of the government of India, whence the necessary orders will be issued to the military authorities at this presidency.

Ordered also, that copies of the resolution, and of the papers noted in the margin,† be forwarded to the government of Fort St. George and Bombay respectively, with a request that orders conformably to the resolution may be issued to the military authorities at those presidencies.

(signed) *J. P. Grant,*
Officiating Secretary to Government of India.

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* *To Military Department.*

From Chief Secretary, Government of Fort St. George, dated 1st December 1835, No. 927, with one Enclosure and Order.

From Chief Secretary, Government of Fort St. George, dated 22d November 1836, No. 981, with one Enclosure and Order.

Extract Political Department, dated 30th January 1837, No. 16.

To Officiating Secretary, Indian Law Commission, dated 8th May 1837, No. 129.

From Officiating Secretary, Indian Law Commission, dated 15th June 1838, No. 140.

From Military Secretary, Government of Bombay, dated 22d May 1838, No. 1483, with one Enclosure. (These papers were received in original with Extract Military Department, dated 18th June 1838, No. 285.)

From Officiating Secretary, Governor-general for the North-west Provinces, dated 13th October 1838, No. 2698.

From Military Secretary, Government of Fort St. George, dated 11 September 1838, No. 2981, with four Enclosures. (These papers were received in original with Extract Military Department, dated 8th October 1838, No. 180.)

Draft of proposed Act.

†. *To Fort St. George.*

From Secretary, Indian Law Commission, dated 15th June 1838, No. 140.

Extract Military Department of the Government of India, dated 20th October 1837, No. 335.

Resolution of Legislative Council, dated 6th November 1837, No. 17.

Extract Military Department, dated 18th June 1838, No. 285, with two Enclosures.

From Officiating Secretary, Governor-general, North-west Provinces, dated 13th October 1838, No. 2698.

Draft of proposed Act.

To Bombay.

From Chief Secretary, Government of Fort St. George, dated 1st December 1835, No. 927, with one Enclosure and Order.

From Chief Secretary, Government of Fort St. George, dated 22d November 1836, No. 981, with one Enclosure and Order.

Extract Political Department, Government of India, dated 30th January 1837, No. 16.

To Officiating Secretary, Indian Law Commission, dated 8th May 1837, No. 129.

Letter from Officiating Secretary, Indian Law Commission, dated 15th June 1838, No. 140.

Extract Military Department, Government of India, dated 16th October 1837, No. 224, with one Enclosure.

Extract Military Department, Government of India, dated 20th October 1837, No. 335.

Resolution of the Legislative Council, dated 6th November 1837, No. 17.

Letter from Officiating Secretary, Governor-general North-west Provinces, dated 13th October 1838, No. 2698.

Extract Military Department, Government of India, dated 8th October 1838, No. 180, with five Enclosures.

Draft of proposed Act.

(No. 458.)

From *J. P. Grant*, Esq. Officiating Secretary to Government of India, to *J. P. Willoughby*, Esq. Secretary to the Government of Bombay.

Legis. Cons. 12 August 1839. No. 46.

Sir,

I AM directed by the Honourable the President in Council to forward to you, to be laid before the Honourable the Governor of Bombay in Council, for the necessary orders, the accompanying copies of a resolution recorded by his Honour in Council, and of the papers referred to therein.

I have, &c.

Fort William, 12 August 1839. (signed) *J. P. Grant*,
Offg Secy to Govt of India.

(No. 457.)

From *J. P. Grant*, Esq. Officiating Secretary to Government of India, to *H. Chamier*, Esq. Chief Secretary to the Government of Fort St. George.

Legis. Cons. 12 August 1839. No. 47.

Sir,

I AM directed by the Honourable the President in Council to forward to you, to be laid before the Right Honourable the Governor of Fort St. George in Council, for the necessary orders, the accompanying copies of a resolution recorded by His Honour in Council, and of the papers referred to therein.

I have, &c.

Fort William, 12 August 1839. (signed) *J. P. Grant*,
Offg Secy to Govt of India.

MINUTE by the Honourable *A. Amos*, Esq., dated 31st July 1839.

Legis. Cons. 12th August 1839. No. 48.

FIRST NOTE.

ACT.—On Sentences of Imprisonment by Courts Martial.

THIS draft is suggested by Mr. Robertson and General Casement in their minutes upon the articles of war. The expediency of passing the Act seems to depend on the point, whether it is so urgently wanted as not to admit of the delay which must occur before the proposed articles of war (in which the matter is provided for) can be received back from England and finally promulgated.

I am not competent to judge of this necessity; but I have been given to understand, that, as the only substitute which has been found effectual in the place of flogging, it has long been usual to punish soldiers with hard labour on the roads, in cases in which such punishment is not authorized by law or the existing articles of war.

I have thought it best not to affix a preamble, as it would not be advisable to proclaim the illegality of a practice which has been so common, and which is so necessary. For the same reason, I have given a declaratory as well as an enacting form to the Act.

(signed) *A. Amos*.

MINUTE by the Honourable *A. Amos*, Esq., dated the 8th August 1839.

Legis. Cons. 12 August 1839. No. 49.

SECOND NOTE.

On Punishments by Courts Martial.

I HAVE altered the draft Act in consequence of Mr. Robertson's note, and the conversation at the last Council.

It has been endeavoured, in the articles of war which are going to England, to remedy what I conceive to be a defect, (but I believe to the dissatisfaction of some, though not all the military authorities,) that the native articles of war for

No. III.–Part 2.
Military Courts of Request.

almost every offence award the punishment only in such vague terms as these: "I shall suffer punishment as by a court martial shall be awarded," "shall be punished according to the nature of his offence by the sentence of a court martial."

This vagueness probably arose from copying the articles of war for the English army; but the vague terms in the English articles are limited and explained by the Mutiny Act, of which the articles are little more than a compendium.

These vague terms would, if literally construed, authorise every species and degree of punishment. I collect that they have been usually construed as authorities for such kinds and degrees of punishment as the long course of precedents of native courts martial warranted. Since the abolition of flogging it would appear that it had been found indispensably necessary to stretch the use of the vague terms in question beyond former precedents; and, under shelter of them, to imprison with hard labour; and recently several sentences of courts martial, including hard labour with irons on the roads, have been duly confirmed.

It would, however, appear that on account of the apprehended illegality of such sentences, immediate and pressing inconvenience was experienced by the military service. I had thought that this apprehension extended only to the hard labour; but according to Mr. Robertson's note, it would appear to extend to imprisonment also. I cannot say that the apprehension is unfounded; for if long usage is not to determine what sentences are justified under such vagueness of words, it would be difficult to decide whether, on the one hand, such powers were not altogether void on account of uncertainty, or on the other, whether a court martial might not award tusheer, or any of Thera Waddy's favourite modes of punishment.

The period of imprisonment with hard labour may be modified either before or after publication of the draft. I thought it an object to avoid prolixity, and therefore have not made all the distinctions upon the subject which are made in the new articles of war, nor have I included solitary confinement.

(signed) *A. Amos.*

Legis. Cons. 12 August 1839. No. 50.

DRAFT OF ACT, dated the 12th August 1839.

ACT.—On Sentences of Imprisonment pronounced by Courts Martial.

1. IT is hereby declared and enacted, that in all cases in which any court martial is authorized by any articles of war for the government of the native officers and soldiers in the service of the East India Company, to punish any non-commissioned officer or soldier according to the nature of the offence and the discretion of such court martial, it is and shall be lawful for such court to sentence the person convicted to be imprisoned, with or without hard labour, for any period not exceeding two years, if the sentence be pronounced by a general court martial, or not exceeding one year if the sentence be pronounced by a district court martial, or not exceeding four months if the sentence be pronounced by a regimental or detachment courts martial.

(signed) *J. P. Grant,*
Officiating Secretary to the Government of India.

Legis. Cons. 12 August 1839. No. 51.

(No. 447.)

From *J. P. Grant*, Esq. Officiating Secretary to the Government of India, to *T. H. Maddock*, Esq. Officiating Secretary to the Government of India with the Governor-general.

Sir,

WITH reference to the minute of the Right hon. the Governor-general which accompanied your letter dated the 4th July last, I am directed by the Hon. the President in Council to request that you will lay before his Lordship the accompanying copy of a despatch addressed to the Honourable the Court of Directors on the present date. Copies of the minutes recorded by the members of the Honourable Board, with reference to his Lordship's observations, are also forwarded herewith.

No. 18, relative to the proposed articles of war.

Minute by the Hon. Mr. Robertson, dated 26th July 1839.
" " Mr. Bird, dated 27th July 1839.
" " Major-general Sir W. Casement, dated 29th July 1839.
" " " Mr. Amos, dated 31st July 1839.

2. I am

No. III.-Part 2.
Military Courts of Request.

2. I am at the same time desired to request that you will submit for the consideration and opinion of his Lordship the accompanying draft of a proposed Act relative to sentences by courts martial of imprisonment by hard labour, together with the minutes as per margin, by the fourth ordinary member of our Board, explaining the objects of it, and the circumstances which have suggested the expediency of passing it.

Minutes by the Hon. Mr. Amos, dated 31st July and 8th August 1839.
Draft of Act, dated 12th August 1839.

3. His Honor in Council directs me to request that, in the event of the proposed Act meeting with the approbation of the Right hon. the Governor-general, you will obtain his Lordship's sanction to its being published, and his assent to its being finally passed without any material alteration.

I have, &c.

Fort William,
12 August 1839.

(signed) *J. P. Grant,*
Officiating Secretary to the Government of India.

From *T. H. Maddock*, Esq. Officiating Secretary to the Government of India with the Governor-general, to *J. P. Grant*, Esq. Officiating Secretary to the Government of India, Fort William.

Legis. Cons. 23 September 1839. No. 1.

Sir,

Legislative.

I AM directed to acknowledge the receipt of your letter, No. 447, dated the 12th ultimo, with enclosures, and in reply to convey the sanction of the Right hon. the Governor-general to the publication for general information of the proposed draft Act relative to sentences by courts martial of imprisonment by hard labour, together with his Lordship's assent, in the usual form, to pass the Act into law, its provisions being approved by him.

I have, &c.

Simla,
5 September 1839.

(signed) *T. H. Maddock,*
Officiating Secretary to the Government of India with the Governor-general.

ASSENT of the Right honourable the Governor-general.

Legis. Cons. 23 September 1839. No. 2. Enclosure. Legislative.

Simla, 5 September 1839.

I DO hereby, under section 70, 3 & 4 Will. 4, c. 85, give my assent to the proposed Act relative to sentences by courts martial of imprisonment by hard labour, received from the Honourable the President in Council, in Mr. Officiating Secretary Grant's letter, No. 447, of the 12th August last.

(signed) *Auckland.*

RESOLUTION.

Legis. Cons. 23 September 1839. No. 3.

Fort William, Legislative Department, 23 September 1839.

As the inconvenience felt from the want of a law such as is herein undermentioned is pressing, and as no objections to a law of the nature contemplated are likely to be developed by public discussion, the Legislative Council of India, under the eighth Standing Orders of Council, resolves unanimously, that the second and third of the Standing Order of Council, passed under date the 6th of July 1835, be suspended with regard to the proposed Act relative to courts martial, to which the assent of the Right hon. the Governor-general under date the 5th instant has been obtained.

(signed) *J. P. Grant,*
Officiating Secretary to the Government of India.

No. III.–Part 2.
Military Courts of Request.

ACT No. XXIII. of 1839.

Legis. Cons. 23 September 1839. No. 4.

Passed by the Honourable the President of the Council of India in Council, on the 23d September 1839.

AN ACT for authorizing Sentences of Imprisonment, with or without Hard Labour, by Courts Martial, in certain Cases.

IT is hereby declared and enacted, that in all cases in which, by a General Order of the Governor-general of India in Council, dated the 24th of February, in the year of our Lord 1835, it is made competent for courts martial to sentence soldiers of the native army in the service of the East India Company to the punishment of dismissal from such service, it is and shall be lawful to sentence such soldiers to be imprisoned, with or without hard labour, for any period not exceeding two years if the sentence be pronounced by a general court martial, or not exceeding one year if the sentence be pronounced by a garrison or line court martial, or not exceeding six months if the sentence be pronounced by a regimental or detachment court martial. And every soldier so sentenced to imprisonment with hard labour for any period whatever, or to imprisonment without hard labour for any period exceeding six months, shall after confirmation of his sentence be dismissed from such service: provided always, that all sentences under this Act pronounced by any court martial inferior to a general court martial, shall require the confirmation of the general or other officer commanding the division or field force to which the person convicted belongs.

(No. 162.)

Legis. Cons. 23 December 1839. No. 1.

EXTRACT from the Proceedings of the Honourable the President in Council in the Military Department, under date the 9th December 1839.

READ a despatch, No. 4496, from the Acting Deputy Secretary to Government in the Military Department at Fort St. George, dated 12th ultimo, suggesting that draft of an Act for empowering criminal courts to receive into their gaols native soldiers sentenced to imprisonment for military offences, should receive the sanction of the government of India.

Ordered, That the foregoing despatch from the Acting Deputy Secretary to Government in the Military Department at Fort St. George, be transmitted in original to the Legislative Department for consideration, and that it may be returned when no longer required.

(True extract.)

(signed) *W. Cubitt*, Major,
Offg Secy to the Govt of India,
Military Dept.

(No. 4496.—Military Department.)

Legis. Cons. 23 December 1839. No. 2. Enclosure.

From Captain *J. H. Cramer*, Acting Deputy Secretary to Government, Fort St. George, to the Secretary to the Government of India, Military Department.

Sir,

6 November 1839. No. 869.

IN forwarding the annexed copy of a letter from the Adjutant-general of the Army, for submission to the government of India, I am directed to state that the case therein brought to notice is specially provided for by Articles 80 and 81 of the proposed articles of war for the native army of India, a draft of which accompanied Mr. Officiating Secretary Maddock's despatch of the 19th of November last; but in the event of its being the intention of the Supreme Government to suspend for a time the publication of that Code of Regulations, it appears desirable to his Lordship in Council, that for the purpose of empowering criminal courts under this presidency to receive native soldiers sentenced to imprisonment for military offences under the recent Act, No. XXIII. of 1839, the draft of an Act submitted with a communication from this department of the 5th of January 1836, should receive the sanction of the Honourable the President of the Council of India in Council.

I have, &c.

Fort St. George,
November 1839.

(signed) *J. H. Cramer*, Captain,
Actg Depy Secy to Govt.

(No. 869.)

From Lieutenant-colonel *R. Alexander*, Adjutant-general of the Army, Fort St. George, to the Secretary to Government, Military Department.

Sir,

Major-general Sir H. Gough, commanding the army in chief, wishes to bring to the consideration of the Right honourable the Governor in Council, that with reference to a letter from the Chief Secretary to Government, addressed to the Chief Secretary to the Government of India, on the 5th January 1836, and the reply thereto, dated 1st February 1836, there is not at present any special authority for the reception of culprits sentenced under Act No. XXIII. of 1839, into the gaols of the criminal courts within this presidency; and as sentences will now be passed by courts martial in accordance with the above-named Act, I have the honour to convey the Major-general's request, that his Lordship in Council will be pleased to publish the necessary orders for the civil authorities to receive prisoners under sentences of courts martial.

I have, &c.

Adj^{t}-Gen$^{l's}$ Office, Fort St. George, 6 November 1839. (signed) *R. Alexander*, L^{t}-Col^{l}, Adj^{t}-Gen^{l} of the Army.

(True copy.)

(signed) *J. H. Cramer*, Captain, Act^{g} Dep^{y} Sec^{y} to Gov^{t}.

(No. 35.—Military Department.)

From Lieutenant-colonel *S. W. Steel*, Secretary to Government, Fort St. George, to the Secretary to the Government of India, Military Department.

Sir,

Par. 1. In reference to your letter, No. 157, under date the 9th of November 1835, I am directed by the Governor in Council to submit for the sanction of the government of India, the accompanying draft of an Act, making the provisions contained in Regulation I. of 1828, in the Code of Fort St. George, applicable to sentences of all native courts martial, whether general, district or garrison, detachment or regimental, within the Company's territories.

2. A transcript of a letter in the Judicial Department, dated the 28th December 1835, from the Registrar of the Sudder and Foujdaree Udalut, with which the draft Act was received, is herewith forwarded.

3. I am instructed to state, that should the draft Act now submitted meet with approval of the Supreme Government, it is the intention of the Governor in Council to apply to individuals sentenced to imprisonment by courts martial the regulation by which they will be deprived of their military pay from the date of sentence to the date of their return to military duty.

I have, &c.

Fort St. George, 5 Jan. 1836. (signed) *S. W. Steel*, L^{t}-Col^{l}, Sec^{y} to Gov^{t}.

Sudder and Foujdaree Udawlut.

(No. 242.)

From *W. Douglas*, Esq. Registrar to the Sudder and Foujdaree Udalut, to the Chief Secretary to the Government.

Sir,

I am directed by the judges of the Sudder and Foujdaree Udalut to acknowledge the receipt of an extract from the minutes of consultation in the Judicial Department, No. 976, dated the 18th instant, communicating, for their information and guidance, an extract from the minutes of consultation in the Military Department, dated the 15th instant, accompanied by a copy of a letter from the Secretary to the government of India, dated the 9th ultimo.

2. The opinion of the judges is required as to "whether the provisions of Regulation I. of 1828, can be ruled to be applicable to sentences of all native

No. III.-Part 2.

Military Courts of Request.

courts martial, whether general, district or garrison, detachment or regimental, within the Company's territories.

3. It appears to the judges, that inasmuch as Regulation I. of 1828 refers exclusively to sentences passed by a court martial under the 6th Article of Sect. 12, Regulation V. of 1827, its provisions cannot be ruled to be applicable generally to the sentences of native courts martial abovementioned; and in compliance with the instructions of the Government, they direct me to submit the accompanying draft of an Act, containing the provisions proposed to be enacted.

I have, &c.
(signed) *W. Douglas,*
Registrar.

Sudder and Foujdaree Udalut
Registrar's Office,
28 December 1835.

(A true copy.)
(signed) *S. W. Steel,* Lt-Col^{l},
Secy to Govt.

ACT No. ——— of

Passed by the Honourable the Governor-general of India in Council, on the

Be it enacted, that from and after the date of the promulgation of this Act, the provisions contained in Regulation I. of 1828, in the Code of Fort St. George, shall be applicable to sentences of all native courts martial, whether general, district or garrison, detachment or regimental, within the Company's territories.

(signed) *W. Douglas,* Regr.

(A true copy.)
(signed) *S. W. Steel,* Lt-Col^{l},
Secy to Govt.

(No. 45.)

From Colonel *W. Casement,* C. B. Secretary to the Government of India, Military Department, to Lieutenant-colonel *S. W. Steel,* Secretary to Government, Military Department, Fort St. George.

Sir,

Military Dept.
No. 7.
No. 11.

I am directed to acknowledge the receipt of your letter, No. 35, under date the 5th ultimo, with its enclosures, and to state in reply, for the information of the Madras government, that the proposed enactment appears to the Governor-general of India in Council to be unnecessary, as in the code of military regulations for the native troops of all the presidencies, which will speedily be published, provision is made for carrying into execution, through the medium of civil authorities when necessary, sentences of imprisonment awarded by a court martial.

I have, &c.
(signed) *W. Casement,*
Secy to the Govt of India, Mily Department.

Fort William,
1 February 1836.

Legis. Cons. 23 December 1839. No. 3. Imprisonment of soldiers in the criminal gaols.

Minute by the Hon. *A. Amos,* Esq., dated 11 December 1839.

The only practical question is, whether the necessity for the Act is so pressing as to require legislation in the interim before we may expect to receive back the articles of war, which will have reached England in November last.

With reference to this question, it is to be considered that the difficulty is only complained of at Madras; it clearly does not exist at Bombay; the Bombay Code providing, that "a prisoner sentenced by a court martial to imprisonment, or solitary confinement, or hard labour, may be forwarded to the criminal judge of the district by the commanding officer of the district, with an authenticated copy of

of the sentence, which the criminal judge shall execute according to its tenor:" Regulation XXII. of 1827, chap. 1, sect. 6, cl. 1, Bombay Code. And the difficulty does not exist, at least as to general courts martial, in Bengal, in consequence of Regulation IV. of 1820, passed for the removal of doubts. It would seem that the difficulty was not felt, as it has not been complained of in regard to courts martial of any kind within Bengal.

I have stated the above to be the only practical question, because I understand from the Commander-in-chief that the Madras Sudder Court maintains that the zillah gaols cannot receive soldiers sentenced to imprisonment by courts martial, except under Regulation I. of 1828, relating to imprisonment for offences beyond the frontier. Whether the sudder be right or wrong, the practical consequence of their maintaining such an opinion must, I suppose, be, the soldiers will not be received in the zillah gaols. With great deference, I should think the sudder were in error, for I suppose the zillah gaols of the Madras presidency must have been used for the confinement of prisoners capitally convicted within the frontier, and whose sentences have been commuted to imprisonment; and also, that under the words "such punishment as by the sentence of a court martial shall be awarded," which are of constant recurrence in the Madras Articles of War, general courts martial, at least, have awarded imprisonment for offences committed within the frontier, and that the offenders have frequently been imprisoned in the zillah gaols. However, be this as it may, I should think that the East India Company's gaols must, in point of law, be open to receive prisoners from any of the Company's courts, in the absence of any specific appropriation of particular gaols to particular courts, which I have not been able to find in the Madras Code. Some doubts might, indeed, arise as to the Company's courts being available by courts martial for the Queen's troops; and, perhaps, a difficulty may exist in regard to the Company's gaols within the frontier receiving prisoners convicted of offences beyond the frontier, for the removal of which latter supposed difficulty, Regulation I. of 1828, Madras Code, appears to have been passed; and it appears to me that this Regulation affords an argument that the framers of it did not think that any Regulation was necessary for prisoners convicted of offences within the frontier, and who might, in some cases, have been sentenced to imprisonment by courts martial before the late Act.

As to the form of the now proposed draft, it is taken from the articles of war, and is copied verbatim as it stands in the draft of articles submitted by Sir H. Fane, as prepared by a board of officers under his directions. Sir H. Fane is not at all warranted in a recent statement made by him, that the draft he submitted has been rejected; it has only been modified, as it obviously required essential modifications. With regard to the present clause, I abstained from an objection, that it would authorize imprisonment in gaols at any distance from the place where the offence was committed, or where the court martial sat; not because I doubted that the objection was tenable, but because I conceived that any practical abuse of the latitude given was not to be anticipated, and that more specific directions might sometimes be attended with inconvenience, and I felt reluctant to propose any alteration in Sir H. Fane's draft, where I did not see any decided and important practical objections. The draft Act sent from Madras restricts the power of imprisonment to the nearest gaol, and enjoins several details which the articles of war, as copied from Sir H. Fane's draft, omit.

I think it would be necessary to send the draft after publication to Madras and Bombay, before finally passing it. This would ordinarily create a delay of three months, though two might, under the circumstances, be deemed sufficient. Time is an important consideration with reference to an Act, the necessity for which may possibly be obviated by the receipt of the articles of war in two or three months.

(signed) *A. Amos.*

No. III.–Part 2.
Military Courts of Request.

Legis. Cons. 23 December 1839. No. 4.

FORT WILLIAM, Legislative Department, 23 December 1839.

The following Draft of a proposed Act was read in Council for the first time on the 23d December 1839.

Act No. ——— of 1839.

AN ACT for Regulating the Execution of Sentences of Imprisonment passed by Courts Martial.

1. WHEREAS doubts have arisen whether by the Regulations of all the presidencies sufficient provision is made for all the cases in which sentences of imprisonment by courts martial are to be executed:

It is hereby declared and enacted, that whenever any sentence of a court martial shall adjudge imprisonment, or imprisonment with labour, for any offence, it is and shall be the duty of every judge, magistrate, or other officer in charge of any gaol, to give effect to such sentence on the offender being delivered into his custody, and on being furnished with a copy of the sentence by the officer commanding the division, garrison, regiment, or detachment by whose orders the offender is tried.

Ordered, That the draft now read be published for general information.

Ordered, That the said draft be reconsidered at the first meeting of the Legislative Council of India after the 4th day of February next.

(signed) *J. P. Grant*,
Offg Secy to the Govt of India.

(No. 641.)

Legis. Cons. 23 December 1839. No. 5.

From *J. P. Grant*, Esq. Officiating Secretary to Government of India, to Captain *J. H. Cramer*, Acting Deputy Secretary to Government in the Military Department, Fort St. George.

Sir,

WITH reference to your letter, No. 4496, dated the 12th ultimo, to the address of the Secretary to the Government of India in the Military Department, I am directed by the Honourable the President in Council to forward to you, for the information of the Right hon. the Governor of Fort St. George in Council, the accompanying printed copy of the draft of a proposed Act for regulating the execution of sentences of imprisonment passed by courts martial, which has been read in Council for the first time on this date, and will be published for general information in the Calcutta Gazette.

I have, &c.

Fort William,
23 December 1839.

(signed) *J. P. Grant*,
Offg Secy to the Govt of India.

Legis. Cons. 23 December 1839. No. 6.

(No. 20.)

FORT WILLIAM, Legislative Department.

RESOLUTION, dated 23 December 1839.

READ an extract Military Department, dated the 9th instant, No. 162, forwarding letter from Acting Deputy Secretary to Government in the Military Department at Fort St. George, suggesting that draft of an Act for empowering criminal courts to receive into their gaols native soldiers sentenced to imprisonment for military offences, should receive the sanction of the government of India.

Ordered, that a printed copy of the draft of a proposed Act, read in Council for the first time under this date, be forwarded to the Military Department, in reply to the extract from that department of the 9th instant, No. 162.

Ordered, that the original papers which accompanied the extract be returned.

(signed) *J. P. Grant*,
Officiating Secretary to the Government of India.

(No. 640.)

From *J. P. Grant*, Esq. Officiating Secretary to Government of India, to *T. H. Maddock*, Esq. Officiating Secretary to the Government of India with the Governor-general.

Legis. Cons. 23 December 1839. No. 7.

Sir,

I AM directed by the Honourable the President in Council to forward to you, to be laid before the Right hon. the Governor-general of India, the accompanying printed copy of the draft of a proposed Act for regulating the execution of sentences of imprisonment passed by courts martial, which has been read in Council for the first time on this date, and will be published for general information in the Calcutta Gazette, together with copies of papers connected therewith, as noted in the margin. If his Lordship approve of the proposed enactment, you are requested to procure the assent required by Sec. 70 of the Charter Act to their being passed without any material alteration.

Extract Military Department, dated 9 December 1839. Minute by the Hon. Mr. Amos, dated 11 Dec. 1839.

I have, &c.

Fort William,
23 December 1839.

(signed) *J. P. Grant*,
Offg Secy to Govt of India.

From *T. H. Maddock*, Esq. Secretary to the Government of India, with the Governor-general, to *J. P. Grant*, Esq. Officiating Secretary to the Government of India, Fort William.

Legis. Cons. 10 February 1840. No. 1.

Sir,

I AM desired to acknowledge the receipt of your letter, No. 640, dated the 23d ultimo, with its enclosures, and in reply, to transmit to you the Governor-general's assent to pass into law the proposed Act for regulating the execution of sentences of imprisonment passed by courts martial, the provision of the enactment being approved by his Lordship.

Legislative.

I have, &c.

Camp Gwalior,
13 Jan. 1840.

(signed) *T. H. Maddock*,
Secretary to the Government of India
with the Governor-general.

ASSENT of the Right Honourable the Governor-general.

Legis. Cons. 10 February 1840. No. 2. Enclosure. Legislative Dep.

Camp Gwalior, 13 January 1840.

I DO hereby, under sect. 70, 3 & 4 William 4, cap. 85, give my assent to the proposed Act for regulating the execution of sentences of imprisonment passed by courts martial, received from the Honourable the President in Council in Mr. Officiating Secretary Grant's letter, No. 640, dated the 23d December 1839.

(signed) *Auckland.*

MINUTE by the Honourable *A. Amos*, Esq., dated 14 January 1840.

Legis. Cons. 10 February 1840. No. 3. Military Imprisonment Act.

WITH reference to the remarks in the accompanying newspaper, I think there is weight in the argument, as applied to the Queen's and Company's European troops, the laws with regard to which we cannot affect. Their troops, would, I conceive, be excluded from our draft by necessary implication; and I presume the draft was mainly, if not entirely directed to cases in which imprisonment is awarded instead of flogging under the recent Act, No. —— of 1839. All misconception will be removed by inserting the words (after "whenever") "under Act, No. —— of 1839."

The words "is and" had better be omitted, in order to avoid a piece of plausible criticism. In fact, the sense is, that "in all future sentences, the magistrate will be bound not only by this new law, but by that duty which now is imposed upon him." The object is not, as suggested in the newspaper, to legalise what by the Act is virtually pronounced to be illegal; but the phraseology indicates that doubts have arisen respecting the legality of the former practice, and that although it is expedient to pass a new Act for the purpose of removing doubts, no alteration is in fact made. I think the word "declare" will indicate

No. III.-Part 2.
Military Courts of Request.

this sufficiently without inserting the words "is and," which to a casual reader must appear ungrammatical.

Perhaps in the concluding lines general courts martial assembled by order of the Commander-in-chief are not sufficiently provided for. I propose, therefore, to omit the words "officer, &c." down to "detachment," and to substitute the word "authority."

(signed) *A. Amos.*

Legis. Cons. 10 February 1840. No. 4. Military Imprisonment Act.

MINUTE by the Honourable Sir *W. Casement*, C.B., dated 18 January 1840.

THE argument in the Englishman, of the 14th instant, does not appear to me well considered. It is true that by sect. 7 of the Annual Mutiny Act a general court martial, and by section 9, a district or garrison court martial in Her Majesty's service, are to sentence any soldier to imprisonment, with or without hard labour, in any public prison, or other place which such court, or the officer commanding the regiment or corps to which the offender belongs or is attached, shall appoint; but no power of selection of place of imprisonment is given to regimental courts martial in Her Majesty's service, (*see* sect. 10); and such courts, therefore, would appear to have no such privilege.

With regard to the commanding officer of the regiment being the only person empowered to give authority to the gaoler to receive the sentenced person, section 27 runs thus:

"27. And be it enacted, that every gaoler and keeper of any prison or house of correction in every part of Her Majesty's dominions shall, upon the order in writing of any commanding officer of a district, garrison, regiment, or corps, (as the case may be,) receive into his custody any soldier under sentence of imprisonment by a general or other court martial, and keep him in a proper place of confinement, with or without hard labour, according to the sentence of the court, and during the time specified in the said order, or until he be discharged, or shall, although the period for which the soldier was originally committed may not have expired, deliver him up to any person producing an order in writing to that effect from any such commanding officer as aforesaid; and every such gaoler who shall refuse to receive and to confine any such non-commissioned officer or soldier in manner as aforesaid, shall forfeit for every such offence the sum of 100 *l.*"

Now, as no part of the Act gives power to commanding officers of districts, or garrisons, or any others, to imprison, except in their capacity as approvers of sentences of courts martial, it follows that either sect. 27 of the Act is of no authority, or that by its provisions the power to order admission into gaol is not limited to regimental commanding officers.

Further, as regards the Company's Mutiny Act, the Englishman quoted sect. 24 only, and founds his conclusion upon that, wholly omitting sect. 23, which contains no such limitation:—

"23. Provided always, and be it further enacted, that it shall be lawful for such general courts martial, by their sentence or judgment, to inflict imprisonment, solitary or otherwise, or corporal punishments, not extending to life or limb, as such court shall think fit, on any non-commissioned officer or soldier, for immoralities, misbehaviour, or neglect of duty; or to adjudge a forfeiture of all benefit or advantage as to increase of pay, or as to pension, which might otherwise have accrued to such non-commissioned officer or soldier, from the length or nature of his service."

"24. Provided always, and be it further enacted, that it shall be lawful for any general or other court martial to sentence any non-commissioned officer or soldier to imprisonment in any fortress or garrison, or other suitable place of safe custody."

To state the matter fairly, it appears to me that it should have been said, that though sect. 23 leaves open, in the case of a general court martial, the choice of place of imprisonment, sect. 24 gives all courts the power, if they choose to assume it, to fix upon any public prison, fortress, &c. This construction, if correct, is important, because, under these sections, the General Order by the Commander-in-chief, dated 15th May 1824, was evidently issued.

General Order, Commander-in-chief, May 1824: "The Commander-in-chief, taking into consideration how ill adapted the zillah gaols are for the accommodation of European soldiers, sentenced by regimental courts martial to confinement

ment, particularly if for any lengthened period, his Excellency enjoins regimental and other courts martial, on all future occasions of passing sentences of that nature, to express their award in general terms, leaving it to the approving officer to fix upon the place of confinement he may deem, under all the circumstances of the case, best calculated to answer the object in view."

The practice to this day is that prescribed in this order. If the proposed Act is to be restricted to the native army, it must be taken to be an enlargement of the already existing Regulation No. IV. of 1820, clause 2, which is as follows:—

"2. It is hereby declared that any zillah or city magistrate shall be competent to give effect to the sentence of a general court martial, adjudging imprisonment with labour among the convicts of the civil power, on the offender being delivered into his custody, and the sentence being certified to him for the purpose of his giving it effect, by the Judge-advocate-general, or his deputy, under the authority of the Commander-in-chief; and the sentence so certified shall serve as the magistrate's warrant and authority for carrying it into effect according to the terms of it."

I think some allusion should be made to that particular Regulation in the preamble to the proposed new enactment. If this is not done, it will remain in force, as far as it goes, and there may arise doubt whether the Judge-advocate-general or his deputy, as laid down in that Regulation, or the officer commanding district, &c. as laid down in the new enactment, is to certify to the gaoler.

If it be intended to restrict the new Act to the native army, Mr. Amos's suggestion to insert the words (after "whenever") under Act No. XXIII. of 1839," will remove all misconception (except, perhaps that just alluded to as to the Regulation IV. of 1820.)

I would certainly leave out the words "is and", on the grounds stated by Mr. Amos.

Regarding the termination of the proposed enactment, the suggested substitution of the word "authority" for the words "officer," &c. down to "detachment," would not, I think, meet the case. The majority of cases in which non-commissioned officers and sepoys (and the same of European soldiers) are tried by general courts martial, and sentenced to the severer punishments, are cases in which the trial has been ordered by the general officer commanding the division or field force, without previous reference to head-quarters of the army; yet all such trials are of course submitted to the Commander-in-chief for confirmation. It is not necessary, and can hardly be desirable in any case, that the Commander-in-chief should certify sentences to magistrates and others. It may conveniently be done by commanding officers of divisions, &c.

I apprehend this Act might conveniently be made to embrace all cases, both European and native. Though an Act of the government cannot affect or alter the Mutiny Acts, it may, I believe, appropriately come in to their aid, and legislate supplementarily where those Acts are silent.

Now, in the Company's Mutiny Act, though power is given to sentence to imprisonment in public gaols, no provision is made for the necessary authority to be given to the gaoler to receive the criminal. In the case of Lieutenant Stokes, of the Madras army (reported in the accompanying newspaper,) the deficiency of the Act in that respect was made manifest, and it is a deficiency likely to occur in every case of imprisonment where a gaol is selected, whether for military or other crimes.

If the proposed Act is to be confined to the native army, I would suggest that it stand thus (after a preamble, cancelling the Clause 2 of Regulation IV. of 1820, above adverted to):—

"It is hereby declared and enacted, that whenever under Act No. XXIII. of 1839, any sentence of a court martial shall adjudge imprisonment, or imprisonment with labour, for any offence, it shall be the duty of every judge, magistrate, sheriff, or other officer in charge of any gaol, to give effect to such sentence on the offender being delivered into his custody, and on being furnished with a copy of the sentence by any officer commanding a division, garrison, regiment, or detachment, as the case may be."

If the proposed Act is to embrace the European as well as the native army, I would suggest that it stand in the following terms:—

"It is hereby declared and enacted, that whenever any sentence of a court martial shall adjudge imprisonment, or imprisonment with labour, for any offence, it shall be the duty of every judge, magistrate, gaoler, or other officer in charge

No. III.-Part 2. Military Courts of Request.

of any gaol, to give effect to such sentence, on the offender being delivered into his custody, and on being furnished with a copy of the sentence by any officer commanding a division or district, garrison, regiment, corps, or detachment, as the case may be."

It appears to me that this wording recognises and makes applicable to India as much as is wanted of the 57th section of the annual Mutiny Act; that it supplies a great desideratum in the Company's Mutiny Act, the 4 Geo. 4, c. 81, and that it provides for the reception of prisoners, under Act XXIII. of 1839, of this government.

(signed) *W. Casement.*

MINUTE by the Honourable *A. Amos*, Esq.

Legis. Cons. 10 February 1840. No. 5. Second Note or Minute: military imprisonment.

THE 27th section of the Mutiny Act makes it clear that there is nothing objectionable, on the face of our draft Act, on the ground of its affecting the Mutiny Act for the Queen's troops. Whether, under the Mutiny Act and our Act, the commanding officer of a district, &c. can alter or supply the omission of a place of custody in the sentence of a court martial, or in the order of the regimental commander, is a different question; and, again, that question may vary, as it concerns general district or garrison courts martial, on the one hand, and, on the other, regimental courts martial.

So there is nothing objectionable, on the face of our draft Act, on the ground of its affecting the Company's Mutiny Act, as there is nothing in our draft Act to prevent the place of custody being named in the sentence of the court.

With regard to the Mutiny Act for the Queen's troops, it appears to extend to India, and is complete in its provisions. But the Company's Mutiny Act is not, according to the construction which I collect it has received, so complete, as making no express provision for imprisonment in gaols. And if a power to imprison in gaols be necessarily incidental to every court which has power to imprison (which I think is the law), or if that power be conferred by the terms "other suitable place," (which I think it would not be), still the requisition on the gaoler is not expressly provided for; and it would seem that, in consequence of such omission, it has been held (wrongly, I think, and perhaps Lieutenant Stokes's case is not authority for this point), that gaolers are not bound to receive European military convicts.

Though the point is of some nicety, I do not think we should be altering or affecting the Company's Mutiny Act, by placing the reception into gaols of military European convicts in the Company's service upon the same footing as military convicts in the Queen's service.

But if we were to enact, in the terms of the General Order of 1824, that in substance, neither the courts of the Queen's or Company's European troops, nor the regimental officers of the Queen's troops, should specify the place of confinement, but that it should be determined by the approving officer; or even, perhaps, that it might be determined, and not merely certified by such officer; this, I think, would be altering the Mutiny Acts. The Englishman wrongly argues that our draft Act, upon the face of it, imports this; whereas it imports no more than the 27th section of the Queen's Mutiny Act.

Another reason why the proposed draft is not wrong upon the face of it is, that, in legal construction, it would be regarded as intended to be applied to the native troops only, provided it would really affect the Mutiny Acts, if applied to European troops; indeed the preamble of the draft indicated its application exclusively to native troops. The general expressions of the Act would be regarded as necessarily limited by the powers of the Indian legislature, without expressly confining those expressions to the native troops.

I see no objection to adopting the principle of Sir W. Casement's first draft, which would probably be held by the courts legally to afford some additional facilities as to the imprisonment of the Company's European troops, besides removing the objections (unseasonable as I think them), to the reception, in the Madras presidency, of convicts under Act XXXIII. of 1839: whether the regimental commander or the sentence of the court must not, in the case of European military convicts, specify the place of custody, our Act does not profess to determine. If provisions for reception of the Company's European military convicts within

within gaols are not virtually, as they are not expressly, given by the Company's Mutiny Act, our Act supplies them, subject to the legal question of this being an affecting or altering the Company's Mutiny Act, which I think it is not. As to convicts under Act XXXIII. of 1839, our Act clearly removes the scruples of the Madras authorities; and the objections in the Englishman, founded on the Mutiny Acts, are of course inapplicable to the native troops.

I have redrafted the Act, with reference to the further consideration which it has undergone, and in closer conformity with the 27th section of the English Mutiny Act.

Vide below for new draft.

Although the annexed draft has an advantage in uniformity, and perhaps on other grounds, yet if it is not likely to work well, as throwing too much responsibility on Indian gaolers, or for other reasons, General Caseman's draft had better be adopted.

23 January 1840. (signed) *A. Amos.*

AN ACT for making further Provision concerning the Imprisonment of Persons under Sentences of Courts Martial.

IT is hereby declared and enacted, that every gaoler shall, upon the order in writing of any commanding officer of a district, garrison, regiment, or corps (as the case may be), receive into his custody any person under sentence of imprisonment by a court martial, and keep him in a proper place of confinement, with or without hard labour, according to the sentence of the court; or shall, although the period for which such person was originally committed may not have expired, deliver him up to any person producing an order in writing to that effect from any such commanding officer as aforesaid; and every such gaoler who shall refuse to receive and to confine any such person in manner as aforesaid, shall forfeit for every such offence, on conviction before any magistrate or justice of the peace, the sum of 1,000 rupees; and it shall be the duty of every judge, magistrate, or other officer in charge of any gaol, to give effect to every such sentence and order aforesaid.

And it is hereby enacted, that Sect. 2, Regulation IV. of 1820, of the Bengal Code, and Clause 1, Sect. 6, Regulation XII. of 1827, of the Bombay Code, are repealed.

ACT No. II. of 1840.

Passed by the Honourable the President of the Council of India in Council, on the 10th February 1840.

Legis. Cons. 10 February 1840. No. 6.

AN ACT for regulating the Execution of Sentences of Imprisonment passed by Courts Martial, in certain Cases.

1. IT is hereby declared and enacted, that whenever under Act No. XXIII. of 1839, any sentence of a court martial shall adjudge imprisonment, or imprisonment with labour, for any offence, it shall be the duty of every judge, magistrate, sheriff, or other officer in charge of any gaol, to give effect to such sentence on the offender being delivered into his custody, and on being furnished with a copy of the sentence by the officer commanding the division, garrison, regiment, or detachment, as the case may be, to which the offender belongs.

No. IV.
Enforcement of Fines.

—(A.) No. IV.—

ENFORCEMENT OF FINES.

(No. 105.)

Legis. Cons. 28 May 1838. No. 11.

From *J. P. Grant*, Esq. Officiating Secretary to the Indian Law Commission, to *R. D. Mangles*, Esq. Officiating Secretary to the Government of India, Legislative Department.

Sir,

I AM directed by the Indian Law Commissioners to request that you will submit for the consideration of the Honourable the President in Council the following observations on the subject to which the papers enclosed with Mr. Macnaghten's letter, No. 266, of the 7th August 1837, relate.

2. The origin of this reference is an application from the judge of zillah Chittagong to the Calcutta Sudder Dewanny Adawlut, to know whether in case of the non-attendance of a party fined under Sect. 12, Regulation III. of 1793, Sect. 21, Regulation IV. of 1793, or Sect. 3, Regulation XIII. of 1796, the fine may be levied by the usual process for the execution of decrees. The inquiry also embraces another point which, perhaps from the judge's letter having been imperfectly transcribed, is not clearly ascertainable, but which seems to be, whether the preferring a litigious appeal is, under Sect. 3, Regulation XIII. of 1796, to be considered a contempt of court, and whether both the person and property of the offender are liable for the satisfaction of the fine which may be imposed under the authority of that section.

3. With regard to fines imposed under Sect. 12, Regulation III. of 1793, viz. for the institution of second suits, and for preferring frivolous, vexatious, or groundless suits, it has apparently been determined that such fines cannot be realized by distress.

4. With respect to fines imposed under Sect. 3, Regulation XIII. of 1796, viz. for preferring litigious appeals, both Courts of Sudder Dewanny Adawlut agree that such fines can be realized under the rules prescribed for the execution of decrees.

5. With respect to contempts of court made punishable by Sect. 21, Regulation IV. of 1793, such as are committed in open court are specially provided for in Sect. 6, Regulation XII. of 1825; but the question respecting the levy of the fine in other cases of contempts, viz. undue arrogation of the authority of the court, and illegal exertions of judicial authority in his (the offender's) own cause, does not appear to have been set at rest. It is to be presumed, therefore, that in such cases, as in cases of fines imposed under Sect. 12, Regulation III. of 1793, the property of the offender is not liable to attachment.

6. The Law Commissioners observe, that in the cases of contempts, not provided for by Sect. 6, Regulation XII. of 1825, and in the cases falling within Sect. 12, Regulation III. of 1793, the law is defective in two respects: first, the courts have no means of realizing the fine unless the offender be apprehended; secondly, if the offender be apprehended, and the fine imposed is beyond his means, he is liable to be imprisoned all his life, though no doubt, in practice, the law would never be allowed this extreme operation. But the Law Commissioners believe that fines are rarely imposed under Sect. 12, Regulation III. of 1793, and that they are still more rarely, perhaps never, imposed under Sect. 21, Regulation IV. of 1793, for contempts, other than contempts in open court. It is plain that the Courts of Sudder Dewanny Adawlut are hardly aware of any such occurrence. From the papers now under examination, it does not appear that any practical inconvenience is felt from the present state of the law, such as would render a special enactment necessary.

Clauses 196 and 197.
Clauses 51 to 57.

7. The enactment of the proposed penal code would provide punishments for preferring groundless suits, and for contempts of court in open court; and general rules are therein laid down for the confinement of delinquents in default of payment of fines, and for the levying of fines. The particular mode in which fines are to be levied, remains of course to be provided for in the code of procedure. The enactment of the penal code, therefore, which would repeal all the penalties

No. IV.
Enforcement of Fines.

penalties in the existing Regulations, when accompanied with the rules of procedure necessary for carrying it into effect, would obviate all anomaly in respect of the realization of fines. Under these circumstances, the Law Commissioners do not recommend the passing of a special law immediately for that purpose.

I have, &c.
(signed) *J. P. Grant,*
Officiating Secretary.

Indian Law Commission,
2 March 1838.

DRAFT of ACT; dated 28 May 1838.

Legis. Cons. 28 May 1838. No. 12.

1. IT is hereby enacted, that in all cases of fines, penalties, and forfeitures, by which offenders are or may be punishable by any court of justice, or upon summary conviction, by any Act or Regulation now in force, or by any Act which shall hereafter be passed, it shall be lawful for the court, or for the officer before whom such offenders are or may be so punishable, on conviction, upon any fine, penalty, or forfeiture not being forthwith paid, to imprison the offender, if the fine, penalty, or forfeiture do not exceed 100 rupees, for any period not longer than two months, and, if it exceed that sum, for any period not longer than six months, unless such fine, penalty, or forfeiture, shall be sooner paid or satisfied.

2. And it is hereby enacted, that upon any fine, penalty, or forfeiture being paid as aforesaid, it shall be lawful for such court or officer as aforesaid, by order of court, or by warrant under the hand and seal of such officer, to levy such fine, penalty, or forfeiture by distress and sale of the goods and chattels of the party offending; but such proceeding by distress shall not prevent the imprisonment of the offender as aforesaid, except from such time as the fine, penalty, or forfeiture shall be thereby satisfied.

3. And it is hereby enacted, that in all cases where offenders by any Act now in force, or which hereafter may be passed, are or may be made punishable by conviction before a magistrate, they shall be punishable in like manner before a justice of the peace, and before any person lawfully exercising the powers of a magistrate.

4. And it is hereby enacted, that in all cases in which offenders are or may be made punishable upon conviction by any Act now in force, or which shall hereafter be passed, it shall be lawful for the officer before whom the offender is punishable, on conviction, to receive proof of the commission of the offence, upon oath, to be by him administered, or upon solemn affirmation.

5. Provided always, that this Act shall not extend to any courts of justice established by virtue of any Royal charter.

(signed) *R. D. Mangles,*
Officiating Secretary to the Government of India.

(No. 188.)

From *R. D. Mangles*, Esq. Officiating Secretary to the Government of India, to *F. J. Halliday*, Esq. Officiating Secretary to the Government of Bengal.

Cons. 28 May 1838. No. 13.

Sir,

Legislative. *Sic.*

WITH reference to Mr. Secretary Mangles' letter, No. 1345, dated the 27th July last, with its enclosures, and to yours of the 6th February last, No. 302, with its enclosures, I am directed by the Honourable the President in Council to forward to you the accompanying copy of draft of Act for enforcing fines by imprisonment, &c. and to request that you will be pleased, with the permission of the Honourable the Deputy-governor of Bengal, to consult the Sudder Court at the presidency, and the chief magistrate, whether the proposed Act will sufficiently supply the defects in the existing laws pointed out by them respectively.

2. The original papers which accompanied your letter are herewith returned.

I have, &c.
Council Chamber, 28 May 1838. (signed) *R. D. Mangles.*

No. IV.
Enforcement of Fines.

Cons. 16 July 1838. No. 7.

Judicial Dep.

(No. 1313.)

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *R. D. Mangles*, Esq. Officiating Secretary to the Government of India, Legislative Department, dated Fort William, 30 June 1838.

Sir,

WITH reference to your letter (No. 188), dated the 28th ultimo, and its enclosure, I am directed by the Honourable the Deputy-governor of Bengal, to request you will lay before the Supreme Government the accompanying copies of two letters from the Register of the Nizamut Adawlut, and chief magistrate of Calcutta, dated respectively the 22d and 27th instant. I have, &c.

(signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

Cons. 16 July 1838. No. 8. Enclosure.

(No. 1725.)

From *J. Hawkins*, Esq. Registrar of the Nizamut Adawlut, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, in the Judicial Department, dated Fort William, 22 June 1838.

Sir,

Nizamut Adawlut.
Present: R. H. Rattray, W. Bradden, N. J. Halhed, Esqrs. Judges.
W. Morrey, and J. R. Hutchinson, Esqrs. Temporary Judges.

I AM directed by the court to acknowledge the receipt of your letter, No. 1096, of the 5th instant, and to state in reply, for the information of the Supreme Government, that they consider the proposed Act to be sufficient for the objects in view.

I am, &c.
(signed) *J. Hawkins*, Registrar.

From *D. M'Farlan*, Esq. Chief Magistrate of Police, Calcutta, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 5th instant, No. 1097, giving cover to the draft of a law for levying fines.

2. I have the honour to report that the present draft would amend sufficiently what appeared to me at the time of writing my former letter to be wanting in Act No. XII. of 1837, of the Supreme Government. A more mature consideration of the Acts passed since the last charter suggests the following remark. The Press Regulation XI. of 1835, states no commutation of imprisonment in default of payment of fine. This draft, if it applied, would give six months' imprisonment in default of payment of a fine of 5,000 rupees; but it is not, I suppose, intended that magistrates should inflict punishment under this Act, and, supposing the Supreme Court to do so, this draft will not help them; the fine will be null. That of XVIII. of 1835, speaks of fine and imprisonment as for a misdemeanor; this word, under English law, comprehends a most extensive limit of punishment, such as, I presume, the present draft does not contemplate in any respect: independent, however, of the object in hand at present, I venture strongly to urge an amendment of that Act; mischief may be done under it with which the Government would be fairly chargeable. I beg also to suggest that the definite phrase "fine" may, in all the Acts, be altered to fine of some given amount. It is meant, no doubt, to be inferred that a man who is a magistrate or other judge must be as fit to settle the amount of a fine as to settle whether a person should pay any fine at all; practically, however, a great variety of opinion will always be found in such matters as the amount of a fine, even among conscientious and sensible men, and it is a great relief to have such points settled beforehand. There may, perhaps, be cases under the customs and similar laws where it would be profitable for a man to pay the fine rather than obey the law; these might be especially provided for, if they exist at all.

3. I observe, however, that the proposed law is intended to embrace bygone Acts of every description,* and very considerable doubts may exist in regard to the propriety of its provisions. The Rule, Ordinance, and Regulation of November 1814, provides penalties far more severe than this draft, and if the draft is to prevail, it in effect annuls the severity of that rule. By it any person

* Viz. Acts of Parliament, Regulations of the Local Government, and Rules, Ordinances, and "Regulations" passed by the local governments with consent of the Supreme Court.

No. IV.
Enforcement of Fines.

person who fails, on conviction, to pay a fine of 10 rupees, and from whose goods distress cannot be levied, may be imprisoned for six months; now nothing is alleged against the working of that rule, and it seems needless to alter it.

4. So also in the Rule, Ordinance, and Regulation against gambling, passed on 17th April 1820, sect. 1, the penalty is 100 rupees, but if not paid, the imprisonment is three months; and in the 2d clause the fine is 50 rupees, but the imprisonment on default is three months.

5. So also in the Rule of November 1821, the fine is rupees 50, commutable, if not paid, to three months' imprisonment.

6. The 9th Geo. 4, cap. 74, clause 44, gives a different scale of commutation from that given in the draft, and perhaps a better one. The 97th clause, however, gives a very large power to justices; is that clause to be abolished by the draft becoming law?*

7. The draft, I presume, does not take in the case of refusal or non-ability to pay assessments (*vide* 33 Geo. 3, cap. 52, clause 158). A question might be raised on the word "forfeiture," and upon that a most important question might come to be decided, viz. whether a poor creature, whose poverty disenables him to satisfy the dues paid by the wealthy for their comfort, might not be sent to gaol. It might, perhaps, be well to exclude this case specially.

8. The kind of imprisonment intended is not stated. I suppose, however, that no labour being specified, simple imprisonment is meant. This would be a great defect if the Act applied generally to all our Calcutta offences.

9. Upon these grounds I venture with deference to submit, that the draft had better be altered, so as to provide a commutation of imprisonment only in cases where existing Regulations were silent on the subject, and perhaps some such scale as the 44th clause above-mentioned gives had better be adopted.

10. In clause 2 of the draft the word "thereby" seems superfluous. If the fine is paid, it seems of no consequence whether it is from proceeds of distress or the charity of a friend.

11. Are the judicial acts of a collector of customs, as in Regulation XXV. of 1836, affected (*see* also clause 24 and clause 30 of that Act, which seem somewhat at variance with each other.)

12. Clause 3:—Persons may, no doubt, be magistrates without being justices of the peace, but I do not think we have any knowledge in this country of justices of the peace not being magistrates. This clause might apparently be shortened.

13. Clause 4:—In the mofussil, I think, solemn affirmation before a judge or magistrate in a judicial matter is always considered to be an oath, and if proved false would be punished as perjury. The necessity for the clause, according to that law, is not apparent. In Calcutta we have never, that I know of, had occasion to prosecute for perjury committed in the cases not comprehended within the common or statute law, and all our old bye-laws give us power to administer oaths. The new laws may, however, require that oaths administered under them in Calcutta should be guarded by the imposition of the penalties attached to perjury.

I have, &c.

(signed) *D. M'Farlan*, Chief Magistrate.

Calcutta Police Office, 27 June 1838.

Judicial Department, the 30th June 1838.

(True copies.)

(signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

MINUTE by the Honourable *A. Amos*, Esq., dated 16 July 1838.

Cons. 16 July 1838. No. 9.

IN order to explain my views concerning the draft of Act for enforcing fines, it is necessary to state briefly the distinction between the powers of magistrates at the presidencies and those in the mofussil of Bengal.

The magistrates at the presidencies, as I collect, have no authority except under their commissions, or as specially delegated to them by particular Acts of the Legislature, which are, *pro tanto*, separate commissions. The extent of their general powers is, as in England, not free from doubt, but I think it may be stated that they have no general power of summary (*i. e.* out of sessions)

* I am not aware that there is any special benefit in retaining this clause.

No. IV.
Enforcement of Fines.

sessions) conviction and punishment, and that their power of committing does not extend to all offences, especially if they be newly created, have not a direct tendency to a breach of the peace, and do not amount to misdemeanors; where they have a power of punishment conferred on them by a new Act of the legislature, that power is strictly construed; if it be a power of "fining," such power does not include that of distraining or imprisoning, for the purpose of enforcing the fine, and it is very doubtful whether it includes a power of examining upon oath. In English statutes it is the constant course to superadd these powers, by special provision, to that of fining.

The mofussil magistrates have general powers for examining upon oath, and committing for all crimes and misdemeanors (Regulation IX. 1793, Regulation IX. 1807); and they have general powers for fining, and enforcing the payment of fines by imprisonment, to the extent of 200 rupees, and six months, in case of crimes and misdemeanors, (Regulation XIV. 1797, Regulation IX. 1807.) They have a criminal jurisdiction as justices of the peace over Europeans in certain cases, specified in the statute 53 Geo. 3, ch. 155. In other cases they commit Europeans to the Supreme Court, under Regulation II. of 1796, and Regulation XV. of 1806. According to the practice in the mofussil, any offence punishable by fine would be considered a misdemeanor; whereas in English law, offences which are punishable summarily by magistrates, are not properly misdemeanors; they are frequently not regarded in a criminal light, the penalty being recoverable by civil suit, as well as by conviction before a magistrate.

Having premised these observations concerning the powers of the presidency and mofussil magistrates, I proceed to notice the operation of the Acts of the Supreme Council from the year 1834 to the present time.

These Acts in general omit any means whereby a fine imposable by a magistrate can be enforced on non-payment. Hence it follows, from the above observations, that our fines, by means of which many of our principal branches of revenue are protected against fraud, cannot be enforced by magistrates at the presidencies at all. According to the practice in the mofussil, they would be enforced there by imprisonment; but if the fine exceeded 200 rupees, doubts would probably arise in the mofussil as to the enforcement of the fine; and if the jurisdiction of the mofussil magistrate should come under the review of the King's Court, on the occasion of fining a European, or otherwise, it may be doubted whether the jurisdiction exercised by the mofussil magistrates in cases where a fine is imposable by a magistrate, but where the offence is not, in the understanding of English lawyers, a crime or misdemeanor, could be supported.

It is remarkable that public attention has not been excited to the circumstance that so many of the Acts passed since 1834 extend the provisions of the 53 Geo. 3, ch. 155, by subjecting European British subjects to the cognizance of, and probably to imprisonment by, mofussil magistrates; the amount of fine and period of imprisonment being often unlimited. It is not, however, improbable, that owing to the Acts in question not having been framed with express reference to the general powers exercised by the mofussil magistrates, the result is likely to be a total impunity to European offenders in the interior.

The practice so prevalent in Acts passed since 1834, of leaving the amount of fine, and even of imprisonment, altogether discretionary with a single magistrate, is contrary to the spirit of the English statutes, and of the mofussil regulations; it is leaving too much discretion in the hands of the magistrates, and will produce sentences by different magistrates, standing in strong contrast with each other. It is a discretion to which the magistrates themselves object. The offender being expressly punishable before a magistrate, I should think that the magistrate could not commit the case to the sessions judge, though the fine exceeded 200 rupees.

It is desirable, in conformity with the usage in English statutes, to provide for taking examinations upon oath or summary convictions; this may, perhaps, not be necessary as regards the mofussil, though if an European were to be prosecuted for perjury in the Supreme Court, he would probably argue that the magistrate had no power to administer an oath, except in misdemeanors.

In the Indian Acts, passed since 1834, many serious doubts would arise from the circumstance that sometimes a summary conviction is to take place before a magistrate, sometimes before a justice or magistrate, and sometimes a joint magistrate,

magistrate, and a person exercising the powers of a magistrate is used; no sufficient reason is traceable in the nature of the offences for the use of these different terms, which occur sometimes in clauses of the same Act.

Though the present Act will provide for the enforcement of many fines which cannot be enforced at present, and will obviate many doubts, yet it is not put forth as a perfect code upon the subject of convictions before magistrates. It does not, as would be desirable in a code, lay down general rules for the enforcement of all fines, but only of those which now cannot be enforced at all, and for future fines. It does not specify with particularity the place of imprisonment; does not provide any forms of conviction, and what is most important, does not provide for appeals. A limit of time also should be fixed for summary convictions. It has not been thought advisable even to anticipate such provisions of the code respecting fines which are contained in the published draft; for those provisions require much consideration, in which we may expect considerable assistance, and the necessity for the present Act, on which the vitality of most of the Acts passed since 1834 seems to depend, is very urgent.

The provisions of the code alluded to are: 1. That the future effects of the offender should be liable, notwithstanding he has suffered the commuted imprisonment. 2. That where the sentence is a fine merely, and not fine and imprisonment, the commuted term of imprisonment should be seven days. 3. A particular scale for commuted imprisonment where the sentence is fine and imprisonment. 4. That for grave offences the fine should be unlimited. On the subject of unlimited fines a very wide difference of opinion exists, even among the few authorities who have hitherto delivered to us their opinions respecting the proposed code. The Law Commissioners, however, restrict their principle as to unlimited fines to grave offences, a principle which will not account for the diversities, in regard to limited and unlimited fines, to be found in the Acts since 1834. It is to be observed, that the Law Commissioners do not advert to the distinction as to whether the fine is to be imposed by one or more magistrates, or by a court; a circumstance which somewhat supports the reasoning of those who contend that the criminal code cannot be judged of without having the code of procedure before us. The second section of the proposed Act may be rejected without affecting the rest of the Act. But I think it ought to be continued; for, at present, in contradiction of every Regulation, and every English statute, whether applicable to England, or passed in England with express reference to the powers of magistrates in India, magistrates (nay, even a single magistrate) may fine and imprison Europeans and natives without limit in some of our Acts since 1834; whilst interspersedly in as many others, without any apparent circumstances to account for a change, the fine and imprisonment are limited.

The commuted imprisonment in the present Act is taken from the 9 Geo. 4, c. 74. The limit of the single magistrate's power to fine and imprison is taken from the mofussil Regulations.

(signed) *A. Amos.*

Fort William, Legislative Department, 16 July 1838.

The following draft of a proposed Act was read in Council for the first time on the 16th July 1838.

Act No. —— of 1838.

Cons. 16 July 1838, No. 10.

1. It is hereby enacted, that in all cases of fines, by which offenders are or may be punishable by any court of justice, or by any magistrate, it shall be lawful, in case of non-payment, if no other means for enforcing the payment are or shall be provided, for the court, by order of court, and for the magistrate, by warrant under his hand, to levy the amount of any such fine upon any goods and chattels of the offender which may be found within the jurisdiction of such court or magistrate; and if no such property shall be found within such jurisdiction, then it shall be lawful for every such court, by order of court, and for every such magistrate, by warrant under his hand, to commit the offender to prison, there to be imprisoned only, or to be imprisoned and kept to hard labour according to the discretion of such court or magistrate, for any term not exceeding two calendar months, where the amount of the fine, together with the costs, shall not exceed 50 rupees; and for any term not exceeding four calendar

No. IV.
Enforcement of Fines.

months where the amount, with costs, shall not exceed 100 rupees, and for any term not exceeding six calendar months in any other case; the commitment to be determinable in each of the cases aforesaid upon payment of the amount with costs.

2. And it is hereby enacted, that in all cases in which offenders are or may be punishable by any magistrate with fine or imprisonment, or both, and where the extreme amount of the fine or imprisonment is not specified, it shall be lawful for the magistrate to impose any fine not exceeding 200 rupees, and to imprison the offender for any term not exceeding six months.

3. And it is hereby enacted, that in all cases in which offenders are or may be punishable by fine before a magistrate, it shall be lawful for the magistrate and he is hereby required to receive proof of the commission of the offence upon oath or solemn affirmation.

4. And it is hereby enacted, that the terms "fine" and "fines" in this Act shall extend to all "penalties" and "forfeitures," and the term "magistrate" shall extend to all "joint magistrates," "persons lawfully exercising the powers of a magistrate," and "justices of the peace."

Ordered, that the draft now read be published for general information.

Ordered, that the said draft be re-considered at the first meeting of the Legislative Council after the 16th day of September next.

(signed) *T. H. Maddock*,
Officiating Secretary to the Government of India.

(No. 230.)

Legis. Cons. 16 July 1838. No. 11.

From *T. H. Maddock*, Esq. Officiating Secretary to the Government of India, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal.

Sir,

Legislative.

I AM directed by the Honourable the President in Council to acknowledge the receipt of your letter (No. 1313.), dated the 30th ultimo, with its enclosure, and in reply to forward to you, for the information of the Honourable the Deputy-governor of Bengal, the accompanying printed copy of draft of proposed Act for enforcing fines, which has been read in Council for the first time on this date, and ublished in the Calcutta Gazette for general information.

I have, &c.

Council Chamber, 16 July 1838.

(signed) *T. H. Maddock*,
Officiating Secretary to the Government of India.

(No. 439.)

Cons. 16 July 1838. No. 12.

From *T. H. Maddock*, Esq. Officiating Secretary to the Government of India, to *H. W. Torrens*, Esq. Deputy Secretary to the Government of India with the Governor-general.

Legislative.

Sir,

I am directed by the Honourable the President in Council to forward to you, for the assent of the Right honourable the Governor-general of India, as required by section 70 of the Charter Act, the accompanying printed copy of draft of proposed Act for enforcing fines, which has been read in Council for the first time on this date, and published for general information, together with copies of papers relating to the matter, as noted in the margin *.

I have, &c.

(signed) *T. H. Maddock*,
Offg Secy to the Govt of India.

Fort William, 16 July 1838.

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* Letter from Secretary to the Government of Bengal, dated 27 July 1837, with Enclosure.
Letter to Officiating Secretary to the Indian Law Commission, dated 7 August 1837.
Letter from Officiating Secretary to the Government of Bengal, dated 6 February 1838, with one Enclosure.
Letter from Officiating Secretary to the Indian Law Commissioners, dated 2 March 1838.
Draft of Act, dated 28 May 1838.
Letter to Officiating Secretary to the Government of Bengal, dated 28 May 1838.
Letter from Secretary to the Government of Bengal, dated 30 June 1838, with Enclosures.
Minute by the Hon. A. Amos, esq., dated 16 July 1838.
Letter to Secretary to the Government of Bengal, dated 16 July 1838.

No. IV.
Enforcement of Fines.

(No. 1932 of 1838.—Judicial Department.)

From *J. P. Willoughby*, Esq. Secretary to the Government of Bombay, to the Officiating Secretary to the Government of India, in the Legislative Department.

Cons. 1 October 1838. No. 18.

Sir,

I am directed by the Honourable the Governor in Council to transmit, for the purpose of being laid before the Honourable the President in Council, copy of a letter, dated the 1st instant, from the Assistant Registrar of the Sudder Foujdaree Adawlut, and of its enclosures, stating objections on the part of the judges of that court to the draft of a proposed Act, dated the 16th of July last.

I have, &c.

(signed) *J. P. Willoughby*,
Secretary to Government.

Bombay Castle, 12 September 1838.

Extract from the Proceedings of Government in the Judicial Department.

Cons. 1 October 1838. No. 19.

From the Assistant Registrar to the Sudder Foujdaree Adawlut.

Sir,

The draft of the proposed Act of Legislative Council, dated the 16th July 1838, appearing to the Court extremely defective, the judges of the Sudder Foujdaree Adawlut have minuted their several objections to it, and have directed me to submit them for the consideration of the Honourable the Governor in Council.

I have, &c.

(signed) *J. W. Woodcock*,
Assistant Registrar.

Bombay Sudder Foujdaree Adawlut, 1 September 1838.

Minute by the Acting Second Puisne Judge.

Many of the objections urged by the fourth judge to the provisions of an Act dated the 16th July 1838, are well worthy of consideration.

It appears to me, however, that there is no doubt on the mode of distraint of property authorised in satisfaction of a fine, which I conceive to be by summary process at the discretion of the court, although I consider that it would be preferable to add "under the rules prescribed in civil process."

I am humbly of opinion, however, that there are other very serious objections to the provisions of this section; it limits the imprisonment, in commutation of the highest fines imposed by any court of justice, to six months. A man may thus after undergoing a short imprisonment be enabled by this Act to enjoy the fruits of his offence; the amount of sums obtained by forgery, peculation, fraud, &c., may thus enable him and his family to revel in their ill-gotten wealth.

I agree with the fourth judge that it would be far more desirable to adopt the provisions of the new code, than, by introducing others now for a short period, add to the evils of so often changing the law.

Section the second of the proposed Act, as the fourth judge justly observes, modifies almost the whole of the criminal Regulations for magistrates; it reduces the extent of their jurisdiction in regard to imprisonment one-half, without any allusion to the law hitherto in force; it controls their power to fine to a very trifling amount, and which I conceive particularly objectionable, fines being one of the best punishments for many crimes, more especially for those resulting from cupidity, in order that ill-gotten wealth may thus be disgorged.

Were this Act made only applicable to the provisions of the Acts passed by the government of India, it would not be so open to objection; and in regard to the powers conferred on magistrates by many of these Acts, I should say would

No. IV.
Enforcement of Fines.

be disadvantageous; I would therefore suggest, that in section 1, it be inserted after the words "in all cases of fines," "provided for in the Acts passed by the government of India."

By this the increased power given to magistrates by some of the Acts of the government of India would be controlled; by this the Bombay Code would remain unaltered, until, by the introduction of the new code, one general change would supersede all former laws.

(signed) *G. Giberne.*

MINUTE by the Acting Third Puisne Judge.

IT appears to me, with reference to the Act of 16th July 1838, desirable to distinguish, whether it is solely applicable to magistrates and justices of the peace, which the general tenor of it leads me to suppose, or whether in all cases of fines, by which offenders are or may be punishable by "any court of justice," it embraces sessions courts. In the event of the enactment extending to the latter court, the provisions of clause 1 are so entirely destructive to the law of fines provided in our Regulations, by making the highest term of commutation six calendar months, as to render a reconsideration of the measure proposed by the Legislative Council highly advisable. On the assumption that the Act has reference to magistrates (though I concur with the fourth judge in giving a preference to the principles on which the imposition of fines is regulated in the new code), I am not prepared to object to the terms of commutation laid down in clause 1, which proportions imprisonment.

It does not appear to me that the object of clause 1 is to curtail the magistrates' power of punishment but simply to provide, that if fine form any portion of it, the maximum term of commutation shall not exceed six calendar months; and this view is, I think, strengthened by the enactment which occurs in the following clause, viz. where the extreme amount of the fine or imprisonment is not specified, it shall be lawful for the magistrate to impose any fine not exceeding 200 rupees, and to imprison the offender for any term not exceeding six months; a provision which, as regards the fine, would circumscribe fines in every instance, as our code leaves the amount discretionary, but as regards imprisonment, would be inoperative, as the maximum is in every instance defined.

I am of opinion, therefore, that clause 2 might with advantage be expunged.

Clause 3 appears superfluous as regards our Regulations.

With reference to the distraint of property, it is intended, I apprehend, to be by summary process, conducted after the manner laid down in Section 37, Clause 2, Regulation XII. 1827, though I fully concur with the fourth judge in opinion that the mode of procedure should be defined, and that the objection raised by him, exists to the magistrates executing the distress.

With reference to the 4th clause, I would with deference submit the following remarks.

It is enacted in clause 1, "if no other means for enforcing the payment are or shall be provided, the fine shall be levied upon any goods or chattels of the offender, and if no such property shall be found, then the subsequent provisions of the clause shall be enforced."

In the seizure of opium, means are provided for enforcing the penalty, forfeiture or fine, by confiscating it property, being thus found, there is no occasion to commit the offender to prison for default; and since any amount of fine may be imposed by clause 1, any amount of opium, I apprehend, may be confiscated, and its value realized.

Any fine imposed for the concealment of smuggled opium, if not realized, would of course be commutable into six months instead of one year's imprisonment, by Section 7, Regulation XXI. 1827. The clause as it stands, unless clause 2 is rescinded, is calculated, as Mr. Greenhill has observed, to perplex and lead to confusion; and the Act throughout is, with reference to our Regulations, somewhat obscure.

(signed) *J. Pyne.*

No. IV.
Enforcement of Fines.

MINUTE by the Fourth Puisne Judge.

MY attention, in reading the draft of an Act, dated 16th July, has been attracted to some defects that appear to me to exist in it.

The first clause authorizes the distraint of property by a magistrate in satisfaction of a fine, and it afterwards alludes to costs; but it is not provided in what manner the distraint is to be made, whether in the mode provided for by the Civil Code for the sale of property in execution of a decree, or at the discretion of a magistrate, or how. Few cases would occur in which some counter claim would not be brought forward, unless it were attended with risk; and if yielded to, the new law would be all but nugatory; but it would be most objectionable, and make the magistrate dependent in all such cases. It would not be advisable to leave it to the discretion of the magistrate, as it might lead to much injustice, by the summary procedure which would in all likelihood be resorted to. Costs are adverted to, but it is not shown how and what costs are leviable. This seems to be requisite, no costs being recognized by the Bombay Criminal Code.

The proportionate imprisonment of this clause does not appear to me to be so good as the rules of the new penal code (*see* chapter 2), the principles of which are, I think, sounder, and which I would adopt in preference, both for that reason, and that the public may not be distracted by perpetual changes of the law. The last indeed occurs to me as a great objection to this Act altogether, the necessity of which is not made known.

Clause 2 amends almost the whole criminal Regulations for magistrates in the Bombay Code, which impose no limit to fines, whilst this contracts their powers to rupees 200; and rather than being expressive of a great alteration in any existing law, it reads as if it were conferring a new power. I would suggest that the clause, if it be passed into a law, should be expressed differently, and that the following would be an improvement:—

"And it is hereby enacted, that in all cases in which offenders are or may be punishable by fine or imprisonment, or both, and where the extreme amount of fine or imprisonment is not specified, it shall not be lawful for a magistrate to impose a fine exceeding rupees 200, or to imprison the offender for a period exceeding six months, anything in any Act of Parliament or Regulation of any presidency notwithstanding."

The 4th clause alludes to fines and forfeitures, and without some explanation, the drift of this is not quite apparent. The term fine by itself is evident, but when it is made to include "all penalties and forfeitures," it is perplexed. Opium is "forfeited" under certain rules, and by this Act only 200 rupees of a seizure of a lak's value could be confiscated; the magistrate being the authority who confiscates.

The term magistrate extending to justices of the peace, would seem to include "justice of the peace courts, and justices within the immediate jurisdiction of Her Majesty's Supreme Courts;" whereas I suppose it is intended to apply to justice of the peace acting singly, and beyond that jurisdiction.

At present, assistant magistrates have higher powers than this Act would give to magistrates in many cases, and as the different grades to whom the term is meant to apply are specified, "assistant magistrates" should probably be introduced.

16 August. (signed) *D. Greenhill.*

(True copies.)
(signed) *J. P. Willoughby,*
Secretary to Government.

(No. 755.)

Cons. 1 October 1838. No. 20.

From *T. H. Maddock*, Esq. Officiating Secretary to the Government of India, to *J. P. Willoughby*, Esq. Secretary to the Government of Bombay.

Sir,

Legislative.

THE President in Council has perused with attention the minutes of the judges of the Bombay Sudder Court, which accompanied your letter of the 12th ultimo, No. 1932. In conformity with the opinions expressed in those minutes,

No. IV.
Enforcement of Fines.

he is unwilling on the present occasion to repeal or modify any of the Regulations of Bombay.

2. In order to avoid interference with the Bombay Regulations, and to obviate the objections which have been urged, the President in Council is desirous that the attention of the judges may again be drawn to the draft of Act, and their opinions be requested with reference to the following points.

3. It is objected by the judges that the Act "limits the imprisonment, in commutation of the highest fines imposed by any court of justice, to six months," and the instances of fines for forgery, peculation, and fraud are adduced. Again, a doubt is expressed as to whether the first section of the Act embraces courts of sessions. If, however, the courts of sessions and courts of justice punishing forgery and the like offences with fine, have, within the Bombay Presidency, at present any lawful means whatsoever of enforcing their fines, which can scarcely be doubted, the President in Council is at a loss to conceive how the Act can be thought to apply to such cases; its operation being expressly limited to cases in which "no means for enforcing payment are provided by law."

4. If the judges of the Sudder Court should be of opinion that the magistrates cannot apply the ordinary powers with which they are invested by the Bombay Regulations for enforcing payment of fines to the enforcing payment of the fines which have been imposed by the Acts of the Supreme Government, it will be very important that the President in Council should be made acquainted with such opinion: for, in that case the Act would apply to the Bombay magistrates acting under the Regulations of the Bombay Code, as they would be without means provided by law for enforcing payment of the fines in question. In that view of the case, the doubts expressed by the judges of the Sudder Court on the subject of "distresses" and "costs" might become relevant and material, as some perplexity upon these points might be experienced in the mofussil by magistrates acting under the Regulations which could not occur to justices acting under Anglo-Indian law. The President in Council, however, is disposed to think that magistrates acting under the Bombay Regulations, have already means provided by law for enforcing the fines imposed by the Acts of the Supreme Government, and conjectures that the judges of the Sudder Court are also of that opinion, from the circumstance of their not deeming any immediate legislation necessary; for if all the fines imposed by the Supreme Government were suspended, the necessity for immediate legislation would, it is conceived, be obvious.

5. The principal object of the Act is to provide means for enforcing the payment of the fines, and taking examinations upon oath, where, as in the town of Calcutta, (and it is presumed also, in the town of Bombay) the fines must be enforced by justices who cannot avail themselves of the general power for enforcing fines given by the Regulations, but must proceed according to Anglo-Indian law, by which no general powers for enforcing fines or taking examinations upon oath are conferred. The exigency which requires the Act to be passed without waiting for the code is, that the fines which have been imposed by the Acts of the Supreme Government, and by which the principal branches of revenue are protected, cannot be enforced except in places where the magistrate can avail himself of the general powers contained in the Regulations. It was thought expedient also to take the same opportunity of enabling courts to enforce the payment of fines in some particular cases in which it was suggested that they had not power to enforce their payment. It does not, however, appear that any court of Bombay stands in this predicament in any case whatever; and if so, the Act cannot be construed to interfere in any way with the courts of Bombay.

6. It has been suggested by the judges of the Sudder that the introduction of "penalties" and "forfeitures" creates a perplexity. As to this, it is to be observed that both in Indian and British legislation pecuniary payments, leviable on conviction, have often been called, indiscriminately, fines, penalties, or forfeitures. Such payments have been denominated by all three terms in the Acts of the Supreme Government. It appears to the President in Council that it would be a strained construction of the Act to apply its terms to forfeitures of confiscated goods; especially as where the law confiscates the whole of smuggled property, it is not open to the objection of not being specific. It is hoped, however,

No. IV.
Enforcement of Fines.

ever, that by the introduction of the word "pecuniary," all doubt upon this point may be avoided.

7. It appears to the President in Council that considerable doubt may be entertained repecting the propriety of investing "assistant magistrates" generally with the power of exacting the fines imposed by the Acts of the Supreme Government in all cases where no means are provided for enforcing the fines, some of these fines amounting to 1,000 rupees, and in some instances the fine being accompanied with imprisonment, which may extend to two years, with hard labour. Besides which, the assistant magistrate would, it is conceived, never come within the operation of the Act, as his proceedings would be under the Regulations.

8. With respect to the commutations of imprisonment, these are taken exactly from the statute 9 Geo. 4, c. 74. As it appears from the communications transmitted to the Supreme Government, that much difference of opinion exists as to the expediency of the system of commutation proposed by the code, it has been thought by the President in Council advisable, on the present emergency, to adhere to the system which has been sanctioned by the British Parliament, especially as the law, in its operation, will be confined to places where magistrates act, who in their ordinary business are accustomed to administer the commutations of imprisonment prescribed by the 9 Geo. 4, c. 74. And it appears to the President in Council that the period of commutation set down in Article 54 of the Code, viz. seven days of imprisonment without labour, may, probably, on reconsideration, appear inadequate for the enforcement of the various fines, unaccompanied with imprisonment, which have been imposed in the Acts of the Supreme Government, to the amount of 500 and 1,000 rupees.

9. The President in Council conceives that in one respect only would the proposed Act modify the Bombay Regulations, viz. in restricting the unlimited power of fining now belonging to the single magistrate. This modification the President in Council is not disposed to press. It may be observed, however, that the Bombay Regulation in question is opposed to the Regulations of the other presidencies, and to the whole course of English jurisprudence. The Law Commissioners propose to limit the amount of fine "in all cases not very heinous." The amount of fine is limited in most of the Acts of the Supreme Government applicable to Bombay as well as other places, and in the few cases in which the amount has been left indefinite in those Acts, the Calcutta magistrates have applied for more definite rules. It may be noticed also, that whilst the single magistrate is, by the Bombay Regulation, allowed to impose unlimited fines, he cannot imprison for more than two months without labour. The judges of the Sudder Court appear to have been under a misapprehension that the Act proposed a limit to fines imposed by judges, or other fines than those imposed by a magistrate.

I have, &c.
(signed) *T. H. Maddock*,
Off^g Sec^y to the Gov^t of India.

Fort William,
1 October 1838.

(No. 11.)

From *J. P. Grant* Esq. Officiating Secretary to the Government of India, to *J. P. Willoughby*, Esq. Secretary to the Government of Bombay.

Cons.
31 Dec. 1838.
No. 41.

Legislative.

Sir,

I AM directed by the Honourable the President in Council to beg that attention may be called to Mr. Officiating Secretary Maddock's letter to your address, dated the 1st of October last, wherein was requested a further explanation of the objections urged by the judges of the Sudder Court at Bombay to the draft of an Act which was read in Council for the first time on the 16th of July last.

2. An Act of the nature in question is urgently required at Calcutta, and it is presumed at the other presidency towns also, but the enactment is delayed until an answer to the reference abovementioned shall be received.

I have, &c.
(signed) *J. P. Grant*,
Off^g Sec. to the Gov^t of India.

Fort William,
31 December 1838.

No. IV.
Enforcement of Fines.

From *W. H. Macnaghten*, Esq. Secretary to the Government of India with the Governor-general, to *T. H. Maddock*, Esq. Officiating Secretary to the Government of India.

Cons.
4 February 1839.
No. 2.
Legislative.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 439, dated the 16th ultimo, submitting for the assent of the Right honourable the Governor-general draft of a proposed Act for enforcing fines. A copy of that assent is herewith enclosed, in the usual form, to pass the Act into law.

2. The Governor-general directs me to suggest, at the same time, a slight verbal alteration in the first section of the draft, and that in lieu of the words, "and if no such property shall be found within such jurisdiction" should be substituted "and if property to the amount of such fine shall not be found within such jurisdiction."

I have, &c.
(signed) *W. H. Macnaghten*,
Secretary to the Government of India with the Governor-general.

Simla, 9 August 1838.

Simla, 9 August 1838.

Legislative.

I DO hereby, under sec. 70, 3 & 4 Will. 4, cap. 85, give my assent to the proposed Act for enforcing fines, received from the Honourable the President in Council, in Mr. Officiating Secretary Maddock's letter, No. 439, dated the 16th ultimo.

(signed) *Auckland.*

(A true copy.)
(signed) *W. H. Macnaghten*,
Secretary to the Government of India with the Governor-general.

(No. 48 of 1839.—Judicial Department.)

Cons.
4 February 1839.
No. 3.

From *J. P. Willoughby*, Esq. Secretary to Government, to the Officiating Secretary to the Government of India in the Legislative Department.

Sir,

I AM directed by the Honourable the Governor in Council to acknowledge the receipt of your letter, dated the 1st of October last, No. 755, and to transmit, for the purpose of being laid before the Honourable the President in Council, the accompanying copy of a letter from the Acting Registrar of the Sudder Adawlut, dated the 17th ultimo, reporting the opinion of the judges of that court on the several points noticed in your letter, with reference to the proposed Act of the 16th of July last.

I have, &c.
Bombay Castle, 5 January 1839. (signed) *J. P. Willoughby*,
Secretary to Government.

(No. 506 of 1838.)

Cons.
4 February 1839.
No. 4.

From *C. Sims*, Esq. Acting Registrar Sudder Foujdarry Adawlut, to the Secretary to Government, Judicial Department, Bombay.

Sir,

I AM directed by the judges of the Sudder Foujdaree Adawlut to acknowledge the receipt of your letter of the 6th ultimo, with its enclosure, from the officiating Secretary to the Government of India, in the Legislative Department, requesting the conrt's opinion and report upon the points therein referred to, relative to the objections urged by them to the draft of a proposed Act, dated the 16th July last.

In reply, I am instructed to forward, for the purpose of being laid before the Honourable the Governor in Council, the accompanying copies of the Minutes

by

by the second, third, and fourth judges of this court, containing their opinion on the points noticed by the Legislative Council.

I have, &c.

Bombay Sudder Foujdarry Adawlut, 17 December 1838.

(signed) *C. Sims*,
Acting Registrar.

MINUTE by the Acting Second Puisne Judge, dated 16th November 1838.

WITH reference to the first point embraced in the third paragraph, the courts of sessions and courts of justice, which I humbly conceive are synonymous, punishing forgery and the like offences with fine within the Bombay Presidency, have not at present any means of enforcing these fines, except by imprisonment. Fines, as a mode of punishment for criminal offences, are always commutable into imprisonment, not exceeding five years, by sect. 9 of Regulation XIV. of 1827.

In regard to the point discussed in the fourth paragraph, I am of opinion, as before recorded, that the provisions of this draft of an Act would be particularly applicable to the Acts passed by the Government of India.

In the Acts which refer to this presidency, the realization of some of the fines is provided for, as in sect. 32 of Act XVII. of 1837 ; and many of the fines in Act I. of 1838 are commutable to imprisonment; and to ensure their realization, in some cases the refusal of the port clearance is allowed, but in other cases there is no provision made for enforcing the fines; and hence it would be advisable that the Act be made applicable to the Acts passed by the Government of India.

There is a slight error in the remark contained in the latter part of the 9th paragraph: by sect. 13 of Regulation XII. of 1827 the magistrate can only imprison for two months, without labour; but by Regulation IV. of 1830, the magistrates' jurisdiction is extended to imprisonment, with hard labour, for one year, so that if the Act in question were made applicable, the jurisdiction of the magistrates under the provisions of the Bombay Code, as before stated, would be reduced at once one-half in extent, without reference to the law hitherto in force. I would repeat my recommendation in my former minute, that the Act referred to be made applicable to the Acts passed by the Government of India only.

(signed) *G. Giberne.*

MINUTE by the Acting Third Puisne Judge.

THE principal object of the Act, as explained in paragraph 5, being to provide means for the enforcement of the payment of fines by justices of the peace, who cannot avail themselves of the general power for enforcing fine given by the Regulations, renders the observations offered in my former minute inapplicable with reference to courts of session and magistrates acting under the Regulations, as in no instance can a fine be imposed without a given period of imprisonment in commutation being awarded. As the operation of the Act therefore will, I apprehend, be confined to the cases instanced in paragraph 5 of the letter under reply, and the enforcement of fines sanctioned under the several Acts of the Supreme Government, wherein fines may be the sole penalty; and as no modification appears to have been contemplated with respect to the existing law of fines, the enactment is not, that I am aware of, open to any objection, save that it is advisable to provide for the manner in which magistrates in the Mofussil, levying fines by distress under Acts passed by the Supreme Government, are to proceed, as our Regulations contain no specific provision on the subject, if we except sect. 37, Regulation XII. 1827, which limits the levy of fines by distraint to one particular offence.

No. IV.
Enforcement of Fines.

It may be permitted me to state, in explanation of the misconstruction I was led into, in supposing the Act applied to sessions courts, under the general term "any courts of justice," that it appeared to me the object of the Act was to ensure the payment of the fine from the property of the offender, in every instance where property might be forthcoming, in supercession of commutation by imprisonment, which was only to be resorted to in cases where property could not be found; and though, after a perusal of the 5th para. of the letter from the Officiating Secretary to the Government of India, the misapprehension is exposed, I would with deference submit that the words "it shall be lawful in cases of non-payment, if no other means of enforcing the payment shall be provided, for the courts by order of court, and for the magistrate by warrant under his hand, to levy the amount of any such fine upon any goods and chattels," &c. &c. might without a strained construction be taken to convey the meaning I conceived them to contain, more particularly as, by the new penal code, the system of distraint in all cases of fines is recommended, and as I wrote under an impression that the Act was promulgated in imitation and anticipation of that law.

23 Nov. 1838. (signed) *J. Pyne.*

MINUTE by the Fourth Puisne Judge, dated 8 December 1838.

ADVERTING to the observations of the Honourable the President in Council in the third para., I would submit to his Honor, that the Bombay code provides no means for enforcing payment of fines, excepting by imprisonment for a fixed period, it being thus optional with parties to pay the fine or suffer the confinement. In some cases of forfeitures, however, as in that of smuggled opium, tobacco, &c. a way is provided for effecting them. See section 42, Regulation XXI. of 1827.

The Bombay code, as above noticed, only provides generally a determinate punishment in lieu of a fine if not paid, and it is only the new code which contemplates distraint in all cases for its recovery; I do not therefore see a necessity for interfering with it at present.

In respect to the remarks contained in the fifth paragraph of Mr. Maddock's letter, I have only respectfully to submit, that my original observations were confined to the draft Act, as the Bombay code would have been affected by it, and that I did not presume to offer any opinion in regard to its application to Acts of Parliament or Her Majesty's Courts at the Presidency; but I am still humbly of opinion, that, if the Act be passed in its present form, it will materially interfere with the Bombay code, as already explained in my first minute.

I have only further to observe, that if the Act be expressly limited to the presidency, any remarks relating to assistant magistrates would of course be irrelevant, as there are no such authorities recognised under the Acts of Parliament.

(signed) *D. Greenhill.*

(True copies.)

(signed) *C. Sims,*
Acting Registrar.

(True copies.)

(signed) *J. P. Willoughby,*
Secretary to Government.

MINUTE by the Honourable *A. Amos*, Esq. dated 26 January 1839.

Cons. 4 February 1839. No. 5.

ALTHOUGH this matter has become somewhat complicated in the course of correspondence, it will admit of easy adjustment.

Without altering the real effect of the Act, it will be made agreeable to the wishes of the Bombay Sudder Judges, if we in terms make it applicable only to the Acts of the Supreme Government.

The

No. IV.
Enforcement of Fines.

The Act will also be made more plain if it be confined to proceedings before magistrates, which is the only defect calling for immediate remedy, and also if the reference to costs is taken away, as it is not important, and will perplex magistrates in the Mofussil.

The Act is intended to remedy a defect in the previous Acts of the Supreme Government, in which it generally occurs that no means of levying fines are specified. Now, if in the Mofussil the unregistered Regulation powers of levying fines and examining upon oath can be applied to the Acts of the Supreme Government, the fines in which affect British subjects, and extend far beyond the amount to which the jurisdiction of the Mofussil magistrate ordinarily extends, still at the presidencies justices of the peace, not being armed with the powers in the Regulations, have, by the English law, no general powers to enforce the payment of fines.

Moreover, a special authority is requisite to enable a justice of the peace to examine upon oath.

Again, the unlimited fines in the Acts of the Supreme Government, and the power of imprisoning as for a misdemeanor, require modification, especially as these powers are now vested in a single justice, without any practicable appeal.

I have made an addition to the last clause, in order to remedy a defect in the Acts of the Supreme Government, which sometimes give the power of conviction to a magistrate, and sometimes to a magistrate or justice, thereby unintentionally limiting the operation of the term magistrate when it stands alone.

A few words respecting the Bombay correspondence. The judges did not advert to the words in the Act, "if no other means for enforcing the payment are or shall be provided." These words exempt all the Bombay Regulations from the operation of the Act, and are an answer to their apprehensions and complaints. This was pointed out to the judges in our answer to their remonstrance. In their reply, they appear to be all, more or less, struck with this, to them, totally new view of the Act; but their endeavour to preserve consistency with their first letter leads them into singular confusion and contradictions which it is not necessary to pursue, as the words which I have introduced into the Act will, I think, perfectly satisfy them.

The judges have not answered the point on which we consulted them, viz. a Mofussil magistrate, not being a justice, imposed under the authority of the new Act, on a British subject, a fine of 2,000 (two thousand) rupees. Can the Mofussil magistrate legally make use of the Mofussil Regulations for the purpose of enforcing payment of the fine? The second judge shows that he does not comprehend the point, for he says that the realization of fines is provided for by section 32 of Act XVII. of 1837, notwithstanding great pains were taken to explain to the judges, that there were no general powers for enforcing fines by the English law. If the answer be in the affirmative, the Act will not affect the Regulation powers; if in the negative, I do not see why the magistrate should not use the power of distress given by the Act, without more specific directions.

(signed) *A. Amos.*

ACT No. II. of 1839.

Passed by the Honourable the President of the Council of India in Council, on the 4th February 1839.

Cons. 4 February 1839. No. 6.

I. It is hereby enacted, that in all cases of fines by which offenders are or may be punishable by any magistrate, according to the provisions of any Act heretofore passed, or which shall hereafter be passed by the Governor-general of India in Council, it shall be lawful, in case of nonpayment, if no other means for enforcing the payment are or shall be provided by such Act or otherwise, for the magistrate, by warrant under his hand, to levy the amount of such fine by distress and sale of any goods and chattels of the offender which may be found within

No. IV.
Enforcement of Fines.

within the jurisdiction of such magistrate, and if no such property shall be found within such jurisdiction, then it shall be lawful for every such magistrate by warrant under his hand, to commit the offender to prison, there to be imprisoned only, or to be imprisoned and kept to hard labour, according to the discretion of such magistrate, for any term not exceeding two calendar months, where the amount of the fine shall not exceed 50 rupees, and for any term not exceeding four calendar months, where the amount shall not exceed 100 rupees, and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid upon payment of the amount.

II. And it is hereby enacted, that in all cases in which offenders are or may be punishable by any magistrate with fine or imprisonment, or both, according to the provisions of any Act heretofore passed or which shall hereafter be passed by the Governor-general of India in Council, and where the extreme amount of the fine or imprisonment is not specified, it shall not be lawful for the magistrate to impose any fine exceeding 200 rupees, or to imprison the offender for any term exceeding six months.

III. And it is hereby enacted, that in all cases in which offenders are or may be punishable by fine before a magistrate, according to the provisions of any Act heretofore passed or which hereafter shall be passed by the Governor-general of India in Council, it shall be lawful for the magistrate, and he is hereby required to receive proof of the commission of the offence upon oath, or upon solemn affirmation in cases where a solemn affirmation is receivable by law instead of an oath.

IV. And it is hereby declared and enacted, that in this Act and in all Acts heretofore passed by the Governor-general of India in Council, the terms "fine" and "fines" shall extend to all "penalties" and "forfeitures," and the term "magistrate" shall extend to all "joint magistrates," "persons lawfully exercising the powers of a magistrate," and "justices of the peace."

(No. 369, of 1839—Judicial Department.)

Cons.
25 February 1839.
No. 26.

From *J. P. Willoughby*, Esq. Secretary to the Government of Bombay, to the Officiating Secretary to the Government of India, in the Legislative Department, dated Bombay Castle, 5 February 1839.

Sir,

In acknowledging the receipt of your letter, dated the 31st December last, No. 11, calling attention to Mr. Officiating Secretary Maddock's communication of the 1st October last, wherein a further explanation in respect to the objections urged by the judges of the Sudder Adawlut at this presidency to the draft Act therein alluded to was requested, I am directed by the Honourable the Governor in Council to refer you to my letter dated the 5th ultimo, No. 48, furnishing the information required by the Government of India on the above subject.

I have, &c.

(signed) *J. P. Willoughby*,
Secretary to the Government.

—(A.) No. V.—

No. V.
Powers of a Master over his Slave.

POWERS OF A MASTER OVER HIS SLAVE.

(No. 182.)

From Law Commissioners to the Honourable the President of the Council of India, in Council, dated the 1st February 1839.

Consultations.
11 Feb. 1839.
No. 14.

Hon. Sir,

We have now the honour to report our opinion upon the question referred to us in Mr. Secretary Grant's letter of the 7th ultimo.

2. That question arises out of a recommendation made by the Law Commission in Note (B.) to the Penal Code, the provisions of the code being framed in accordance with the recommendation, which is, "that no act falling under the definition of an offence should be exempted from punishment because it is committed by a master against a slave."

The Honourable Court of Directors observe, in their despatch in the Legislative Department, dated 26th September 1838 (No. 15), of which an extract accompanied the above-mentioned letter of Mr. Grant to our secretary, that this recommendation has their entire concurrence, and they direct that Government will lose no time in passing an enactment to the effect of the recommendation.

The Right honourable the Governor-general is stated, in a letter from the officiating secretary to the government of India with the Governor-general, dated the 18th December 1838, an extract of which also accompanied Mr. Grant's letter, to be impressed with the belief that "this principle (the principle of the recommendation) has been invariably acknowledged and acted up to in all courts of justice in Bengal, such being the result of a minute inquiry entered into by the Sudder Dewanny Adawlut of the lower provinces within the last four years."

"A similar equitable principle," it is added, "is believed to have been generally adhered to in the north-west provinces, in the very few instances in which persons have appeared before a criminal tribunal in the character of master and slave, the spirit of the Regulations of government requiring that all parties should be dealt with in our courts of justice on a footing of perfect equality."

The secretary with the Governor-general then proceeds to remark, "that it will remain for the Honourable the President in Council to determine whether, after a consideration of the question, reason might not be shown for deferring the immediate enactment of a law which there might be some doubt for considering specially requisite with reference to the limited prevalence of slavery in the Bengal presidency, the very mild character in which it exists, and the established principle in our courts of refusing to recognise any distinction of persons in respect of criminal proceedings."

"His Lordship has directed me in this letter," the secretary with the Governor-general continues, "more especially to refer to the presidency of Bengal; but although he is less accurately informed of the law and practice in the other presidencies, he is led to believe that the same principle of general protection is also extended to them; but he would wish on this head to have further information."

The question referred to us by Mr. Secretary Grant's letter, which encloses the documents we have cited, is, "whether the law, as now actually in force over every part of British India, is or is not such as to make the passing of a law of the nature directed by the Honourable Court requisite, in order that the intention of the home Government may be carried into complete effect."

To this question we must answer, that we think the passing of a law of the nature directed by the Honourable Court is requisite, in order that the intention of the home Government may be carried into complete effect.

No. V.
Powers of a Master over his Slave.

Our reasons for thus answering are as follows: First, if we take our notion of the law now in force from the statements of the various judicial functionaries as to the course they would pursue, or would expect their subordinates to pursue under supposed circumstances, then the law in some parts of British India is already in conformity with the intentions of the home Government; in other parts it is not; and in other parts it is in such a state that no one can say with certainty whether it is or is not in conformity with those intentions.. It will be observed, of course, that law depending upon the opinions of functionaries is liable to be changed by a change of functionaries.

It is in the last-mentioned state that we conceive the law to be in the lower provinces subject to this presidency. We speak with the utmost deference to the Right honourable the Governor-general, but his Lordship was writing only from recollection of documents which we have before us. We say this upon the presumption, that the minute inquiry which his Lordship alludes to as having been entered into by the Sudder Dewanny Adawlut for the lower provinces within the last four years, was that inquiry which was instituted for the purpose of enabling the court to reply to certain questions addressed to them on the subject by the Law Commission, and the result of which, combined with the result of similar inquiries instituted by the courts of Sudder and Foujdaree Adawlut at Madras and Bombay, formed the basis of that recommendation of the Law Commissioners which induced the Honourable Court of Directors to issue the instruction now under discussion.

The uncertain state of the law, as collected from the answers of the judicial functionaries, is set forth in Note (B.) to the Penal Code. But in consequence of the doubts expressed by the Right honourable the Governor-general as to the opinions of the functionaries of the lower provinces, it will be right to cite more largely from those authorities..

Mr. C. R. Martin, the officiating judge of the 24 Pergunnahs, says, "The authority of the master over his slave is quite absolute according to the Mahomedan law, and protection cannot legally be extended to the latter in case of cruelty or hard usage; but notwithstanding the law at the present time is so much on the side of the master, it is an acknowledged power of the courts to award penalties on the master if he do not feed and clothe his slaves well, do not allow them to marry, and punish them without cause."

Mr. J. R. Ewart, the officiating magistrate of the southern division of Cuttack, says, "A master, whether Hindoo or Mussulman, is considered to have a right to his slave's labour, and to apply summarily such moderate correction as is necessary. If it is proved that a master has exceeded that limit, he is liable to punishment."

Mr. C. Harding, the commissioner of circuit of the 12th division, says, "Complaints between master and slave are of such rare occurrence, and the practice of courts so different, according to circumstances, that it is impossible to reply to this question satisfactorily. If a master, without due provocation, seriously maltreated his slave, he would probably be fined and admonished. If he moderately chastised him for imprudence, disobedience, or neglect of duty, he would be considered justified in so doing."

Mr. W. Dampier, the commissioner of the 16th division, says, "A magistrate is, I consider, authorized to interfere in cases of cruelty or severe maltreatment only; but as no law is laid down, the practice of affording the assistance varies much, some officers entirely separating the slave and master, whilst others deem it sufficient to take security for the future good conduct of the master."

Mr. R. H. Mytton, the magistrate of Sylhet, says, "The criminal courts do not interfere between master and slave, except for ill-treatment, or any act which may militate against nature. In the former case, moderate corrections of a slave by his master would not be considered as a misdemeanor."

These citations show that the judicial functionaries of the lower provinces are far from unanimous in denying the right of correction to the master, though it is true that about half those who have given any opinion say they should make no difference between the treatment of a slave and a freeman.

The court of Nizamut Adawlut, however, which presides over and regulates the proceedings of all these functionaries, had expressed a different opinion. In the letter written by the registrar of the court, in answer to the inquiries of the Sudder Court, it is said, "A master would not be punished, the court opine, for inflicting

No. V.
Powers of a Master over his Slave.

inflicting a slight correction on his legal slave, such as a teacher would be justified in inflicting on a scholar, or a father on his child."

In the upper provinces, as the Nizamut Adawlut, summing up the opinions given by their subordinates, state, without expression of dissent on their own part, that no distinction is recognised between the slave and the freeman in criminal matters, with some few exceptions, it may be said that the law is already in conformity with the intentions of the home Government; still understanding by the word law, the course which the judicial functionaries say they would pursue.

With respect to the presidencies of Madras and Bombay, the Right honourable the Governor-general expresses a wish for further information. Upon this we beg to remark that the Law Commission, when it made the recommendation contained in Note (B.) to the Penal Code, had collected from those presidencies a body of information precisely similar to that which it had collected from Bengal. The result is shortly stated in that note, and need not be here repeated. Of neither of those presidencies can it be said that the law is throughout every part of them already in conformity with the intentions of the home Government. Note (A).

Secondly. We have been speaking hitherto of the law as collected from the statements of the various judicial functionaries as to the course they would pursue, or would expect their subordinates to pursue, under supposed circumstances. But it must be remembered that a law so collected is one which the people have no means of knowing with any reasonable approach to certainty. This is in itself sufficiently evident; but a striking light is thrown upon it by comparing the answer of the officiating magistrate of South Cuttack, already cited, which recognises the right of moderate correction in the master, with the answer of the neighbouring functionary, Mr. Mills, the officiating magistrate of Central Cuttack. The latter states that the practice which he finds has been adopted by every officer that has presided in his court, "is to punish the master and manumit any slave who prefers a complaint against him for cruelly hard usage, or has any other reason for wishing to leave him. It does not signify," he says, "whether the ill-treatment of the master, or alleged cause of dissatisfaction on the part of the slave, is substantiated or not; every magistrate has passed an order on all such cases to the following purport: 'We do not recognise slavery; you may go where you please, and if your master lays violent hands on you, he shall be punished.'" And not only does Mr. Mills state this as the uniform practice of his own court, but he also thinks he may with safety assert, "that the magistrates of Bengal never recognise the masters to have a legal right over their slaves with regard to their person."

But it is further to be observed, that not only have the people no means of knowing with any reasonable approach to certainty the law which would in general be administered to them, but the sources of information on the subject which are open to them would probably tend to mislead them. Those sources are the Mahomedan law, the Hindoo law, and the Regulations.

The substance of the Mahomedan and Hindoo laws on this subject may be shortly stated in the words of the muftees and pundits of the Sudder Dewanny Adawlut of Calcutta. In the year 1808, that court, with a view to ascertain whether any modification of the Mahomedan or Hindoo laws of slavery appear requisite or expedient, "resolved that certain questions should be put to the muftees and pundits of the court."

The third of those questions was, What offences upon the persons of slaves, and particularly of female slaves, committed by their owners or by others, are legally punishable, and in what manner? Slavery in India, p. 303.

The answer of the muftees was, "It is unlawful for a master to punish his male or female slaves for disrespectful conduct, and such like offences, further than by tadeeb (correction or chastisement), as the power of passing sentences by tazeer and kisas is solely vested in the hakim. If, therefore, the master should exceed the limits of his power of chastisement above stated, he is liable to tazeer," &c.

The answer * of the pundits was, "In cases of disobedience or fault committed by

* This answer was made to the second question of the court, but is referred to in the answer to the third.

No. V.

Powers of a Master over his Slave.

by the slave, the master has power to beat his slave with a thin stick, or to bind him with a rope; and if he should consider the slave deserving of severe punishment, he may pull* his hair, or expose him upon an ass."

It may be observed, with regard to Mahomedan law, that as they only are slaves by that law who are captured in an infidel territory in time of war, or who are the descendants of such captives, the status of slavery contemplated by that law can hardly be said to have any existence in this country. But, on the other hand, those parts of the Regulations of the Bengal Code, adopted afterwards into the Madras Code, which provide that a master who has murdered his slave shall not screen himself under the technical objection derived from the principle of kisas or retaliation, are legislative recognitions, not only of the criminal branch of Mahomedan law, but also of the existence of a status of slavery capable of intercepting the general principles belonging to that branch.

At Madras, too, the Mahomedan law as to the master's right of punishing, received so late as 1820 the confirmation of a circular order of the Court of Foujdaree Adawlut, which has never been revoked, though it is said by the judges of that court, in their answer to the Law Commission, not to be recognised in practice. It is however recognised so late as 1823, in a general report to the Governor in Council by the Foujdaree Adawlut.

Slavery in India, p. 926.

With regard to Hindoo slavery, it may be said that the question under discussion is one belonging to the criminal branch of the law, and that the criminal branch of Hindoo law has been superseded by the Mahomedan; but this, we apprehend, is not a strictly correct view of the matter. We do not think this question belongs to the criminal branch of the existing law, but to the law of persons or of status. We think that when the Mahomedan conquerors introduced their own criminal law, and left to the Hindoos their own law of persons or of status, they left to them that exception or defence against criminal charges which arises out of the Hindoo status of slavery. This doctrine may be illustrated by the more palpable case of the exception or defence arising out of the law of marriage. There can be no doubt, we think, that a Mahomedan judge would hold a Hindoo exempt from punishment for restraint upon the person of a woman who was his wife by Hindoo law, though he might have more than the four wives permitted by the Mahomedan law of marriage, and have been united to them in a manner which that law does not recognise.

The magistrate of Agra, whose answers evince much reflection and research, adverts to this view of the subject. But he is of opinion that the Mahomedans did interfere to a certain extent with the Hindoo status of slavery, and he cites from the Ayneen Akbaree, vol. 1, p. 302, the following passage, where Akbar, giving instructions for the guidance of the police, says, "He must not allow private people to confine the person of any one, nor admit of people being sold as slaves. He shall not allow a woman to be burnt contrary to her inclination." But supposing Mr. Mansel to be right on the historical question, it still does not follow that the British Government of India, in adopting the Mahomedan criminal law, adopted also the Mahomedan modifications of the Hindoo law of status. Mr. Mansel says, with reference to this doctrine, "The criminal law, as administered under Regulation VI. & VII. of 1803, is undefined and anomalous to a degree which renders it necessary to the student to fall back upon first principles, and the magistrate, among conflicting analogies, must select that which is most consonant to natural justice." We are far from thinking that this is any unreasonable stretch of judicial discretion in favour of personal liberty; but we are now considering the subject, not with a view to the judicial decision of a particular case, but to that systematic legislation for which the Law Commission was created. Mr. Mansel very properly confines his doctrine to such parts of British India as have been under Mahomedan sway. With regard to the remainder, into which Mahomedan law has been no otherwise introduced than by our Regulations, there can be no ground for thinking that the Hindoo law of status has been altered.

It is to be noted also, that by the construction of the Sudder Dewanny Adawlut of 1798, confirmed by the Governor-general in Council, on the 12th of April

* More correctly shave.

No. V.
Powers of a Master over his Slave.

April of that year, and fully recognised in the subsequent Resolution of the Honourable the Vice-president in Council, dated 9th September 1827, the spirit of the rule contained in Section 15, Regulation IV. of 1793, for observing the Mahomedan and Hindoo laws in suits regarding succession, inheritance, marriage and caste, and all religious usages and institutions, was determined to be applicable to cases of slavery. It is true that the rule and the construction have direct reference only to civil proceedings; but they must, we apprehend, operate indirectly in criminal proceedings, by obliging the criminal courts to admit those exceptions or defences which arise out of the civil rights thus confirmed. We may employ again the illustration of marriage above adduced: we cannot doubt that under the rule a criminal court would hold a Hindoo justified in exercising such restraint towards his wives as would amount to false imprisonment if exercised towards other women; and if that be so, the same court ought certainly to deal in the same way under the construction, with the exception or defence arising out of slavery.

The Regulations, the last-mentioned source of law accessible to the people, are silent on the point in question.

Silence of the Regulations.

Some of the judicial authorities indeed, and in particular those of the north-west provinces, consider this silence of the Regulations as involving a negation of the power in question.

The collective opinion of these authorities is thus summed up by the Sudder Dewanny Adawlut.

Although the Mahomedan law permits the master to correct his slave with moderation, the code by which the magistrates and other criminal authorities are required to regulate their proceedings does not recognise any such power; and as the Regulations of government draw no distinction between the slave and freemen in criminal matters, but place them on a level, it is the practice of the courts, following the principles of equal justice, to treat them both alike, affording them equal protection and equal redress whenever they come before them, and whether they stand in the relation of master and slave to each other or not.

This inference, from the silence of the Regulations, would be a just one if the Regulations professed to be a complete code. But this is not the case; they profess to be merely a supplement and corrective of Mahomedan and Hindoo law. We think, therefore, that it would be very unsafe to infer that any provision of those two systems was repealed by the mere omission to notice it in the Regulations.

We think, therefore, we are justified in saying that the sources of information which are open to the people would probably tend to mislead them; and if this is the case, an express enactment or declaration by the Legislature seems highly desirable. It would be very hard upon a master who had given his slave moderate correction, in the supposed exercise of a legal right, to be brought into a court of justice as a criminal, and subjected to punishment.

How far the people are actually misled it would be difficult to estimate. From some instances which have come to our knowledge, it would seem that the people feel it is not safe to trust to the three sources of law above mentioned; that they do conjecture as well as they can, frequently indeed overshooting the mark, what course the criminal courts will adopt. But whether the above-mentioned sources of information do really mislead the people, or whether they do not mislead, because they are known to be unsafe guides, a law distinctly declaring that the legal right of moderate correction does or does not exist, is the remedy indicated by either state of things.

The question, which of these two doctrines is it most expedient to promulgate as law, is not submitted to us by the present reference, and some of us do not feel prepared to express, at this stage of the inquiry into slavery, any opinion upon that point; we therefore submit the draft, without further remark, of an Act for carrying into effect the views of the Honourable the Court of Directors, founded upon the recommendation contained in Note (B.) to the Penal Code.

We have inserted in an Appendix the evidence which we have taken since the general subject of slavery was submitted to us on the 5th Novmber last. The evidence which has been heretofore collected on this subject has been principally that of European judicial functionaries, and describes little more than what takes place in courts of justice. In the evidence now submitted will be found some information respecting the domestic condition of the slaves.

No. V.
Powers of a Master over his Slave.

We have also placed in the Appendix a compilation from the original authorities relating to slavery made by our secretary, Mr. J. C. C. Sutherland.

We submit this our Report for the consideration of your Honor in Council.

We have, &c.

(signed) *A. Amos.*
C. H. Cameron.
F. Millett.
D. Elliott.
J. Young.

I have sent up a separate Minute, stating my opinion respecting the expediency of the proposed law.

(signed) *C. H. Cameron.*

It is hereby declared and enacted, that whoever assaults, imprisons, or inflicts any bodily hurt upon any person being a slave, under circumstances which would not have justified such assaulting, imprisoning, or inflicting bodily hurt upon such person if such person had not been a slave, is liable to be punished by all courts of criminal jurisdiction within the territories subject to the government of the East India Company as he would be liable to be punished by such courts if such person had not been a slave.

Consultations. 11 Feb. 1839. No. 15. Enclosure.

Hindoo Slavery.

In the technical language of Hindoo law, the susrushaka or person owing service (susrusha), is five-fold: The pupil (sishya), the apprentice (antevasi), the hireling (brilaka), the overseer (adhikarmakut), and the slave (dasa). Breach of obedience due is one of the 18 titles of law. The four first are denominated servants (kurmakara), and are liable to pure work.

Narada, Digest, b. 3, c. 1, v. 3.

Idem, v. 26.

Idem, v. 29.

2. There are 15 descriptions of slaves enumerated by Narada, who are said to be liable to impure work: The house-born (grihujatu), one born in the house of a female slave; the bought (krila), the obtained (labda), the inherited (dayádupugatu), the self sold, the captive in war, the apostate from religious mendicity or asceticism, the maintained in a famine (aukala britta), the pledged by his owner, the slave for a debt, who submits to slavery for discharge from debt, the won in a stake (panejitu), one who is overcome in a contest, who had agreed to submit to slavery in that event, the self offered, with the words, "I am thine," the constituted (kirtu), for a stipulated time the slave of his food (bhákta das), the slave for his bride (baduva krita).

3. The labdha or obtained slave is described in the Mitakshara as obtained by acceptance and the like. Mr. Colebrook has rendered the term "received by donation;" the author of the Digest in his comment says, "by acceptance of donation and the like." If not included in this denomination, the female slave acquired by her marriage to a man's slave, is a 16th class: according to a test of Katyayana and its comment in the Veváda Chintamam, she may be either a free woman or a slave of another, if he had assented to her marriage. Another instance which may perhaps be included in the labdha is below noticed (para. 9.)

Dig. b. 3, c. 1, v. 55.

4. The free man in the last eight instances must consent to slavery. The maintained in a famine is described by the author of the Mitakshara as "preserved from death for slavery." The apostate becomes the king's slave if he fail in performing atonement. The author of the Digest says, that the captive in war must also assent to slavery to save his life; but in the Mitakshara this assent is not implied.

Menu, c. 8, v. 415, cited in the Digest, b. 3, c. 1, v. 33.

Menu enumerates seven slaves, the captive, the slave for his food, the bought, the house-born, the given, the paternal, and the penal (dandodas), explained to be one consenting to slavery to discharge a fine, and the like. The author of the Mitakshara says that his enumeration is not exclusive of other description of slaves, which opinion the author of the Digest adopts.

6. Any person bound to obedience, is only bound to render service suitable to his class; according to which also is he to be treated. In the Digest, B. III. c. 1, s. 1, v. 7, the verse of Narada, which implies this position, is not rendered according to the comment and the more obvious sense of the texts, but it is said generally that all slaves are to perform the lowest offices.

7. By

7. By the old law, in the direct order of the class, a Brahmin might have a wife of each of the three classes inferior to himself; a khetrya, one of both of his two inferior classes; and a vaisya a sudra wife. On the same principle servitude is said to be in the direct order of the classes; the superior cannot be the slave of the inferior, but an equal may be of an equal. Dig. b. 3, c. 1, v. 56, 57, 58.

8. But the Brahmin is not liable to slavery. The apostate is stated generally to be the slave of the king in the Mitakshara, which does not cite the text of Katyayana, in which it is said the apostate Brahmin is to be banished. The rule of slavery in the direct order of the classes does not apply to the apostate slave. Dig. b. 3, c. 1, v. 30. According to the author of the Digest, a khatriya and vaisya apostate may, if he assent, serve an inferior Hindoo slave. Dig. b. 3, c. 1, v. 56.

9. In treaties of adoption, an extract imputed to the Kalika Purana, though of doubtful authenticity, is prominently cited. (See translation of the Dattaka Mimansa, sec. IV. § 22, and Mitakshara, on inheritance, c. XI. s. I. § 13.) It has a passage which declares, that adopted sons duly initiated, may be considered as sons, else they are termed slaves. The author of the Digest commenting on the words "bought" and "received" in Narades' description of slaves, observes that they may mean also boys purchased or received for adoption, but who have become slaves through some failure in the form; and he adds, that they become slaves independent of consent; and he is not shaken in his position, though it should be urged that thus a Brahmin might become a slave. Book 3, c. 1; Comment on v. 27.

10. Sir T. Strange, in his Appendix to the 5th cap. of his Hindoo Law, quotes a letter of Mr. Colebrook on Hindoo slavery, generally, in which he discusses the peculiar point just referred to. Mr. Colebrook quotes the elaborate exposition of the author of the Dattaka Mimansa, (sec. IV. § 40, 41. 46); which is, in effect, that the informally adopted falls to the condition of a slave if the adoption fail from three causes; 1, excess of age; 2, rites omitted; 3, impossible from their prior performance. Mr. Colebrook does not treat the construction of the author of the Digest with much respect, and adds, that but for the commentary of the author of the Duttaka Mimansa, he should consider the words in the passage of the Kalika Purana as figurative, and merely intended to declare the adoption void.

11. The author of Mitakshara, in his comment on the labdha or obtained slave, as already noticed, says by acceptance (parigraha), and the like. Parigraha means also adoption; but if he contemplated the case of the informally adopted, he would probably have been more explicit.

12. I think the first impression of Mr. Colebrook, that the passage in the extract imputed to the Kalika Purana is not to be construed literally, is correct; nor does the comment of Nunda Pundit appear to me opposed to this. He merely deduces from the text three predicaments, in which, in an informal adoption, the adopted are said to be "slaves", that is, do not acquire the final relation.

13. The power of moderate chastisement of slaves seems a necessary condition of the relation of master and slave. Menu (cap. VIII. v. 299 & 300) declares that a wife, a son, a slave (dasa), a pupil and a younger brother may be chastised with a rope, a slip of bambu (vence dala); they are to be beaten on the back part of their bodies. The person chastising contrary to his rule incurs the penalty of theft. The commentator, Kulaka Bhutta, says the chastisement is for the sake of "instruction," and that the bambu dala is a light sulaka slip or lath. A text of Katyayana, cited in the Rutnakara is this: Corporal punishment (tadana) "and binding, so also vexation (vidambana). There are the penalties of a slave; pecuniary fine is not ordained." The author of the Rutnakara explains, that by corporal punishment is meant flagellation with a whip and the like. By vexation, tonsure, exposure on an ass, and so forth. Dig. idem, v. 2, half verse omitted. Sir W. Jones has used servant in his translation of this text, so also elsewhere, v. 415, in particular; but Mr. Colebrook here substitutes slave, *vide* Dig. b. 3, c. 1, v. 33.

14. Narada declares that the pupil deserting his master may be corporally punished and confined; and Gotama says, that for ignorance and incapacity he may be corrected "with a small rope or cane." The Rutnakara, commenting on another text of Narada, enjoining the duty of the pupil, says that he is thus declared to be a servant. Dig. idem, v. 19. Idem, v. 12.

15. By another text of law, the mutual litigation between husband and wife, teacher and pupil, father and son, master and servant, is not legal. The author of the Digest remarks that this does not exclude special cases, and that the text implies that the teacher and so forth has the power of correction, and adds that if the pupil or the son violate his duty, and the teacher or father be weak and Idem, v. 10.

unable to correct him, it is consistent with common sense that he should then apply to the king.

Dig. b. 3, c. 1, v. 19. 16. Narada, in his text, has the words badha and bandha (binding); the former might mean death, and the author of the Mitakshara obviates that sense, by declaring that corporal punishment (tadana) is meant on account of the slightness of the fault. It is not important whether the mode of punishment indicated by rope is tying up or stripes. It appears clear that the Hindoo law recognises the power of the master to inflict moderate chastisement on his slave; he is, however, liable to punishment for abuse of that power.

Idem, v. 51, 52. 17. Can a slave own or earn property independent of his master? There are two nearly identical passages of Narada and Menu (cap. VII. 416) on this subject, which declare that a wife, a slave and a son can have no exclusive property, and that their gains belong to their owner. A passage of Katyayana declares the dominion of the master over the slave's goods; but the master has no right to the goods thus acquired by his favour or sale, according to one reading, by public sale, and another reading rejects the negative. The translated passage is as it occurs in the printed copy of the Chintamam, the author of which says, whatever property is obtained by a slave, by the favour of his master and by self-sale, is the slave's property; the master is not entitled to it.

Idem, v. 54.

18. Kullaka Bhuta, commenting on the above text of Menu, says that it is to declare the dependence of the wife and the rest, and he illustrates the case of Stridhun as an instance of property in the wife. The author of the Digest, in his comment on these passages, seems of opinion that the slave may have exclusive property; and in a prior passage he combats the objection that a slave maintained, having no property, cannot repay his food by asserting that he may through affection possess property.

19. As a general position, it appears, however, to me correct to say that the goods and earnings of a slave belong to his master; the exception being that to which the master has assured his ownership, proceeds of a self-sale or anything analogous.

Idem, v. 42. 20. By the preservation of his master's life from imminent danger, a slave is not only emancipated, but entitled to inherit as a son; and if a female slave, who

Idem, v. 49. bear her master a son, according to a text of Katyayana, both are entitled to liberty; but according to the explanation of the Prakasa Panijala and other Maithela books, as noticed in the Chintamam and Digest, this must be only considered in the case where the master has no legitimate or adopted son.

Idem, v. 33. 21. Except by the preservation of his master's life (and his will, and in the case of the female slave by bearing him a son), there is no emancipation of the first five slaves enumerated in para. 2. This is distinctly stated by the author of the Mitakshara, who does not even allude to the text of Gotama, favourable to the female slave in the case premised.

Idem, v. 44. 22. According to the comment of Vijnanesmana on a very obscure text of Yajnya Walkya (which he declares applicable to the apprentice as well as slave), the slave maintained in a famine and the slave for his food are emancipated by relinquishing their support and replacing what they have consumed from the commencement of their slavery; but the words of this text do not suggest this latter position.

Idem. v. 43. 23. Narada says, the first is released by giving a pair of oxen, for what he has consumed in a famine is not discharged by labour; and he adds, that the second is released immediately on relinquishing his food. The author of the Rutnakara holds that the slave fed in a famine obtains his liberty by relinquishment of food and gift of a pair of oxen. In this, the more obvious sense of the text, the author of the Digest concurs, noticing, however, that the author of the Vevâda Chintamam holds, that he must give the oxen in addition to what he had consumed.

24. According to the Chintamam and Digest, the slave for his food is released by relinquishing the same, and this appears the most reasonable doctrine. It does not seem unreasonable that he whose life was saved in famine should make some return besides his labour; but that he should give both a pair of oxen and the value of his support, seems unjust and not intended.

Idem, v. 46. 25. The debtor slave is released by liquidation of his debt, with interest, according to Narada. The comment in the Mitakshara on the obscure text of Yajnya Walkya, already noticed, says, "That the debtor slave is discharged on repaying, with interest, his present creditor what he paid to redeem him from a former

former creditor." This seems the mention of a special instance by way of illustration.

26. The pledged slave reverts, of course, to his master who pledged him, if he redeem him from the mortgagee. This is declared by Narada; but an involved and obscure comment on the above obscure text of Yajnya Walkya, in the Mitakshara, bears this construction, that the pledged slave is released on paying the amount for which his master pledged him, with interest. It, however, hardly can have been meant that an owner pledging his slave at an under-valuation should give the slave the right of redemption at that under-price. Dig. b. 3, c. 1, v. 45. Cited in Digest, b. 3, c. 1; comment on v. 46.

27. The slave for his bride, literally, attracted by a female slave, is emancipated by separation, "because (says the author of the Mitakshara) it is prohibited to cohabit with a slave."

28. The slave for a term is, of course, emancipated by the lapse of the period. The captive, the stake-won and the self-offered are emancipated, according to Narada, cited in the Mitakshara, by finding a substitute equally capable of labour; that is, according to the Vevâda Chintamam, "any other slaves." For the apostate the only release is death; he is the slave of the king. Texts of Hindoo law especially provide for the release of those enslaved by force or by fraud of kidnappers; and the interference of the king is required. Idem, v. 46. Narada, cited in the Vevâda Chintamam, and Yajnya Walkya, in the Mitakshara.

29. It thus appears, that for the mass of slaves which fall within the first five classes, the law has given little hope of emancipation. Idem, v. 40, 41.

30. There are two texts, Menu, which, if taken literally, abridge that hope. A Brahmin may compel any sudra, though unbought, to render service of a slave (dasya) to him, for he was created to serve the Brahmin; and even the emancipated is not released from his servile state, which is natural and indelible. (C. 8, v. 413 & 414.) Dig. b. 3, c. 1, v. 36. 38.

31. The commentator adds, "for spiritual purposes it is necessary that obedience be paid by a sudra to the Brahmin, or other twice-born man. This is what is meant, else the subsequent enumeration of slaves would be nugatory;" that is, if a sudra can never escape from servitude.

32. The author of the Chintamun, commenting on the last of the two texts, states it is meant to express contempt of slaves otherwise purchased; and other causes of slavery would not be pertinent in regard to sudras, nor would they be capable of manumission. It is mentioned by him as a passage of the Murkundaya Purnu.

33. The author of the Digest has a long and, as usual, unsatisfactory comment on these terrific texts. He denies that the sudra is born a slave to all men, or becomes the slave of any one who takes him, but intimates that the relation of master and slave is indissoluble. Regarding the text, as applicable to the slave licensed, not enfranchised, he supposes the case where such slave undertakes the service of a second master; in that case he belongs to him, and may be coerced to do servile work, without penalty incurred by the second master.

34. In one instance the power of master to sell seems limited. According to a text of Katyayana, cited in the Chintamun, a man not urged by distress, who attempts to sell his female slaves, who is obedient and objects, is to be fined two pavas. The text implies that the sale would be illegal. Dig. b. 3; c. 1, v. 60.

35. The issue of a slave is a slave. This is implied by the definition of the house-born, and the position that the free woman who marries a slave becomes the slave of her husband's master. If a man, without stipulation to the contrary, allowed his slave-girl to marry a free man, it should follow that she would be released from her master; but if his assent were wanting, his property in her would remain undisturbed, and the offspring, on the general principle of the greater right of the owner of the soil, would be his. This principle is distinctly laid down in Menu, c. 9, v. 48 & 55; but if some of the natives examined by the Law Commission, are accurate, the rule, on defect of stipulation, does not seem always to be the local usage. One witness, a resident of Cuttack, says the local usage is the converse of the legal rule; and others have stated that, in the absence of special agreement, the masters of slaves who have intermarried share the progeny.

36. The eighth of Mr. Macnaghten's Collection of Precedents on Slavery has a construction of Hindoo law resting on reasoning. If *A.* would sell his slave *B.* to *C.* for a fixed price, and by such sale great grievance would be inflicted on *B.*, as, for instance, his removal to a distant country, then in that case, if another purchaser, at the same price, offers, whether designated by *B.* or not, *A.* must sell to such other purchaser. The reason assigned is, that the master would

No. V.
Powers of a Master over his Slave.

would suffer no less. The present pundit of the Sudder Dewanny Adawlut, Vaydeanath Misser, who gave this opinion, has been examined by the Law Commission, and states that it would be considered as oppressive to sell a slave, so as to place him beyond the reach of communication with people of his own class, or to separate families. The courts ought to interfere to prevent such sales. There does not appear to be any legal authorities manifesting such tenderness for the slave; and if the pundit's doctrine is to be taken for law, it must be considered as resting on popular usage and feeling, to which is opposed any oppressive exercise of his power over his slave by a master.

(signed) *J. C. C. Sutherland,*
Secretary.

Calcutta, 1 February 1839.

Consultations.
11 Feb. 1839.
No. 16.
Enclosure.

MINUTE by the Honourable *C. H. Cameron* on Hindoo Slavery.

It is proper to begin with a short statement of my motives for sending up this separate Minute with our Report.

The Law Commission recommended that in the Penal Code "no act falling under the definition of an offence should be exempted from punishment, because it is committed by a master against a slave."

We are now called upon to say whether the law is not already in conformity with that recommendation in every part of British India, and, if it is not, to prepare a draft of an Act which shall make it so. An opinion upon the expediency of the law is not asked from us; but the expediency of such a special law does not necessarily follow from the expediency of adopting the principle in a general code; and therefore, being called upon for a draft of such a special law, I think we are called upon by our position to express an opinion upon the question of expediency, if we have formed one. We have abstained from doing so in our Report, for the reasons therein mentioned. I have formed an opinion upon this question, and, so far as regards this presidency, an opinion which I think is very unlikely to be shaken by further inquiries; and I therefore take this mode of expressing it.

I shall first consider whether there is any reason to suppose that the proposed law will excite dissatisfaction in any such degree as ought to prevent its enactment.

For this purpose, it is proper to consider what changes in the laws relating to slavery have already been made and acquiesced in.

Regulation X. of 1811 prohibited the importation of slaves from foreign countries.

Whether the prohibition is of importation of slaves generally, or only of importation of slaves for the purpose of being sold, given away, or otherwise disposed of, is difficult to say, when the various high authorities who have held contrary opinions upon the point are considered.

The Honourable Court of Directors, on the 26th April 1820, held that the Regulation prohibited importation generally; the contrary doctrine, however, seems to have been acted upon both before and since.

The Regulation IV. of 1822 prohibits the removal of slaves, for the purpose of traffic, from one province to another within this presidency.

These are the only * two general laws made by the Legislature which interfere with the rights of masters; but there are several cases in which local authorities have legislated with that effect by proclamation, and others in which the people have believed that legislation of that kind had taken place, which are deserving of notice.

Slavery in India, 101, *et seq.*

In the year 1812 Sir C. Metcalfe, then resident at Delhi, issued a proclamation prohibiting absolutely the sale of slaves. The government doubted the expediency of this proclamation in respect of this prohibition (and in another respect also), because the law in the territory of Delhi would thereby become different

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* The two Regulations regarding kisas, cited in our Report for a different purpose, are hardly worth noting with a view to my present purpose.

No. V.
Powers of a Master over his Slave.

different from what it was in the rest of British India. A correspondence ensued, in the course of which Sir C. Metcalfe says, in a letter, dated 3d January 1813, " I do not find that the prohibition of the sale of slaves has occasioned any surprise at this place. It is considered to be merely the extension to this territory of the orders promulgated in other parts of the British dominions; and, from a general misunderstanding of the orders of government issued elsewhere on this subject, it is not known that greater restrictions are in force in this district at the present moment than in any other part of the country. It is desirable, in my humble opinion, that this delusion should not be done away, either here or elsewhere, by a formal sanction for the sale of slaves."

In a letter dated 16th April 1813, Sir C. Metcalfe says, in explanation of the passage just cited, " It was my intention to intimate that the prohibition of the sale within this territory had not occasioned any surprise, it being generally conceived that the same prohibition previously existed in all other parts of the British dominions. The prohibition of the traffic in slaves, whether it be announced in a prohibition of the sale, or a prohibition of the importation, must undoubtedly occasion a certain degree of dissatisfaction; but it is amongst the worse orders of the community—amongst the professed dealers in human flesh, whose abominable livelihood is affected by the abolition; and amongst that detestable class of wretches who bring up slave girls, from the earliest age, for public prostitution. The respectable orders of society, though they may experience some inconvenience from the privation, acknowledge the humanity and propriety of the prohibition."

The consequence was, that the prohibition was allowed to continue in the proclamation, which was substituted for the one above mentioned, the second Article of the substituted proclamation being as follows: " The sale and purchase of slaves in the territory of Delhi are also strictly prohibited; and any person who shall buy or sell, or shall be concerned in buying or selling, one or more slaves shall be liable to be punished by the court of criminal judicature."

The final result is very extraordinary and very illustrative. The proclamation and all distinct recollection of its contents appear to have perished at Delhi; but in its place there subsists a belief that Sir C. Metcalfe abolished, not the sale of slaves, but slavery itself.

The Commissioner of Delhi says, in his answers to the questions of the Law Commission, " Since the promulgation, in this territory, of the law prohibiting slavery, we have not even recognised possession as a claim; and I do not at this present moment recollect any instance of a male slave petitioning for emancipation. I have known very many applications from the unfortunate class of females purchased for the purposes of prostitution, and in every case the applicants were absolved for any further compulsory servitude, the mistress being referred to the civil court to obtain compensation for any expense incurred for food, clothing, jewels, &c."

The judge of Delhi says, " About the year 1811 some orders on the subject of slavery were issued by the then chief authority of Delhi. The precise nature of these orders I am now unable to state, a copy of them not being procurable; but I have reason to believe that they went far to remove all invidious distinctions between master and slave, and that the courts in the Delhi territory, which have probably been guided in their decisions by the orders in question, have not for many years, so far as I am aware, recognised any right or immunity beyond that of service to attach to the one which did not, in an equal degree, belong to the other."

The officiating session judge of Cawnpoor says, " The reasons why such cases have never come before me is principally that my experience, since 1833, has been wholly confined to the Delhi territory, where, for a long time, the name of slavery only has existed; its reality has been long extinct." " Having been, before my appointment to Delhi, for eight years in South Behar, where I have myself, as registrar and civil judge, daily decided cases of purchase of whole families of predial slaves or kohars, I was astonished to find that slavery was not recognized at Delhi. I was informed that, since Mr. Seaton's* time, no claim to a slave, or to compel slaves to work, has been allowed; and I found the established practice of the court, that whenever a person petitioned that

* Mr. Seaton was Sir C. Metcalfe's immediate predecessor.

No. V.
Powers of a Master over his Slave.

that another person had claimed him or her as a slave, an ayadnama, a certificate of freedom, was given him or her to the effect that they were free. I gladly hailed this custom; but I pursued another course, which I deemed more effectual. It struck me that issuing those ayadnamas, or certificates, was, to a certain extent, allowing the existence of slavery in some sort or other. When similar applications were made to me, I used merely to pass an order that slavery did not exist, and informed the petitioners that if any person molested him or her, he should be punished."

The additional judge of Burdwan says, in his answer to the questions of the Law Commission, "In this district the impression amongst the natives is almost universal that the existing laws prohibit the purchasing of slaves; and though this is not in reality the case, still all that now remains of the traffic in slaves is the occasional purchase of a few children who are offered for sale in times of great scarcity."

The officiating magistrate of Hooghly, after stating a case from the records of his office, in which two slave girls, who had been abstracted from their master's house, were made over to him, though they alleged that they had met with constant maltreatment in his house, adds, "It would not, however, be fair to judge of the practice of the court from one isolated instance. The idea that the natives in general entertain of what is likely to be the decision of our courts, in cases of slavery, is widely different. I am informed by the old inhabitants of the place, that under the Dutch government, which encouraged slavery, an immense number of persons of that class were to be found in Chinsurah; but finding, after the cession, that their new rulers looked with a cold eye upon the right of property which the master asserted in the slave, they had generally shaken off their fetters, and gone abroad as freemen. So strong, indeed, was the opinion of our disinclination to uphold slavery, that I cannot learn that any one ever came forward to reclaim his runaway bondsmen. Such is still, I have reason to believe, the prevailing idea on this subject of the inhabitants of the district at large."

The joint magistrate of Bograh concludes his answer thus: "I would beg to remark, that the prevailing idea amongst the natives now is, that slavery has been long since abolished; and the system has, to all intents and purposes, ceased."

Since the general subject of slavery was referred to us on the 5th November last, we have examined as many native witnesses conversant with it as we could find in Calcutta. One of these, Durbsing Das, Oviah Mussul Khan, speaking of his country, North Cuttack, states as follows: "All kinds of slaves are constantly sold; but, according to popular recognition, the consent of the slave is necessary. This custom has arisen from a proclamation * issued in 1824, by Mr. Robert Kerr, who was Commissioner of Cuttack."

A slave who was sold against his consent, ran away. His master used force to coerce him. He complained to the magistrate, who gave him no protection; he then appealed to the Commissioner, who gave him his liberty, fined the purchaser, and issued the proclamation of which I have spoken, declaring the sale of slaves illegal. Since that time, I think in 1829 or 1830, a slave complained to Mr. Forester, the magistrate, who declared a deed of sale to be unlawful, fined the purchaser, awarded costs from him to the slave, and referred the purchaser to the civil court to recover the price he had paid from the seller. This is the only case I remember since the proclamation. The effect of the proclamation has been, not to put an end to sales, but to prevent their taking place without the consent of the slave.

These instances all point to the conclusion that the respectable and influential portion of the native community may be expected to yield a ready obedience to any commands of the ruling power, having for their object the protection of slaves from oppression.

I have been careful, in setting forth these instances, to confine myself entirely to statements of fact, and I have, therefore, omitted some strong expressions of opinion contained in the documents from which I have quoted. These expressions are in favour of the perfect safety of legislating, to any extent, on this subject;

* It is right to mention that another native witness considers this to be a local custom of Cuttack, existing before the proclamation of Mr. Kerr.

No. V.
Powers of a Master over his Slave.

subject; but I am not sure that I have not met, in the mass of evidence before me, opinions which ought to be placed in the opposite scale. I can venture to affirm that I have met with no statements of fact to be opposed to those which I have set forth.

Assuming, then, there is no reason to apprehend that the proposed law will excite discontent in any important degree, it remains only to be considered whether, upon intrinsic grounds, it is desirable that the master should not possess the power of moderately correcting his slave.

It is necessary to bear in mind that the question relates to such moderate correction as a parent may inflict upon his child; not to such severe punishment as a West Indian master might inflict upon his negro. This difference, it is true, is only one of degree; but it, nevertheless, is a difference of fundamental importance, as regards the proposed measure, or, more strictly, as regards the reasons by which the proposed measure must be justified.

If the slave-owner of Bengal were now, by law, in possession of a power by which he could extort productive labour from his unwilling slaves, it might be desirable, for the sake of humanity, to take away that power; but it could not be alleged, as one of the reasons in favour of such a measure, that the power to be taken from the master was a power of no substantial value to him. I think such a reason may be alleged in favour of the proposed law; and I think that reason, coupled with the liability to abuse which is inseparable from a power residing in private persons to inflict corporal punishment upon adults, sufficient to justify the enactment of the proposed law.

Further, if the power in question were substantially valuable, it might be necessary to accompany its abolition, where it still exists, with other measures which may well be dispensed with upon the contrary supposition.

I think it is desirable that the master should not possess the power of moderate correction.

Our researches into the subject of Indian slavery have led me to believe that it operates in a great degree in mitigation of the evils which are incident to the state of society prevailing in the greater part of this country. I believe that it mitigates the evils of poverty, at all times pressing heavily upon the lower orders; in times of dearth and famine, pressing with intolerable severity. Slavery may be regarded as the Indian poor law and prevention of infanticide; and if it were necessary, for securing the advantages which belong to it in this capacity, to invest the master with the power of moderate correction, I should hesitate before I pronounced an opinion against the legal sanction of that power: but I do not think that the power of moderate correction can have that effect. The only way in which it can be supposed to have that effect is by enabling the master to obtain productive labour from an unwilling slave; to obtain that kind of labour which will leave a surplus after maintaining the slave and his family. The experience of West Indian slavery and of English pauperism both show, in their opposite results, that productive labour cannot be extorted from an unwilling labourer, without the infliction or the expectation of such punishment as English manners will not tolerate, as the judicial authorities of British India do not recognise, and, as I believe, the laws of India never sanctioned. The investigations of the Commissioners of Poor Law Inquiry in the year 1832-3 produced, if my memory does not much deceive me, an irresistible body of evidence to the truth of this doctrine. It is not that a man cannot be made to do work by such correction as a parent may inflict upon a child, but that he cannot be made to do such work as will pay for his maintenance, and leave a profit to his employer. Now there is not, I think, one of the judicial authorities of this presidency among those who have given a distinct opinion upon the point, who recognises any greater right in the master than that which a parent has in respect of a child or master in respect of a scholar or an apprentice. Consequently if the slavery of this part of India is beneficial to the master, it must be either because the slave has some other motive besides terror to make it so, or that the master oversteps those narrow limits to this power of correction which are recognised by all those judicial functionaries who admit that any power of correction at all resides in the master. The former supposition, I believe, is in accordance generally with the real state of facts in this country; the latter is only realized in rare cases of exception. Slavery in the east is not like slavery in the west,—a system of mere violence and oppression, a system of which the vivifying principle is the dread of the cart-whip. Slavery in the east is a system which seems to be held together by the

No. V.
Powers of a Master over his Slave.

mutual interests of master and slave, and by the force of habit; it is held together very loosely, no doubt, but still sufficiently to produce practical results. The perpetual and hereditary service of their domestics is what the upper classes in India particularly desire, as conducive to that privacy which belongs to their households. On the other hand, the lower classes are glad to bind themselves and their posterity to such perpetual service, in order to be secure of subsistence in sickness and in old age, and in those periods of scarcity which are every now and then recurring. The force of habit, so peculiarly strong in this country, operates also upon both parties to prevent the dissolution of their mutual relation. All I have hitherto read and heard of Indian slavery leads me to think that it may be described, with some approach to accuracy, as a custom according to which a poor family serves a rich one from generation to generation, the rich family in return supporting the poor one in age and sickness as well as in health and vigour, and in periods when the poor family could not earn enough to maintain itself, as well as when it could earn more than enough. The status of each family of slaves appears to originate in one of two ways. First, in a contract by which a freeman sells himself and his posterity, or sells his child (or other relative) and its posterity; and secondly, in the birth of a child which has been begotten by a man of superior caste upon a woman of inferior caste. Such child is, in some parts of the country, a slave, and may become of course the stock of a race of slaves. But in whatever way the status may originate, the continuance of it must, it would seem, except in cases of abuse, have been in a great measure voluntary on the part of the slave; for the master never seems to have had any means of enforcing his rights which were at once lawful and effectual. Proceedings against a slave in courts of law are manifestly ineffectual. Such moderate correction as a parent may inflict on a child certainly was lawful, though many of our functionaries no longer permit it; but it must always have been ineffectual. Such severe correction as would be effectual has always been unlawful.

This last proposition seems evident, from the answer of the muftees and pundits of the Sudder Dewanny Adawlut, already quoted in one Report. The muftees say, "It is further unlawful for a master to punish his male or female slaves for disrespectful conduct and such like offences, further than by tadeeb (correction or chastisement), as the power of passing sentences of tazeer and kisas, &c., is solely vested in the hakim. If, therefore, the master should exceed the limits of his power of chastisement above stated, he is liable to tazeer." Tazeer is, in its lowest degree, the kind of punishment inflicted upon the smallest misdemeanors by the magistrate. What the master may inflict upon his slave is something less than the lowest degree of tazeer.

The pundits say, "In cases of disobedience or fault committed by the slave, the master has power to beat his slave with a thin stick, or to bind him with a rope. And if he should consider the slave deserving of severe punishment, he may pull his hair, or expose him upon an ass."

More correctly shave his hair, as our secretary, Mr. Sutherland, informs me.

The thin stick reminds me of the alleged right of an Englishman to correct his wife with a similar instrument. It is true that the ignominious punishment last mentioned might be felt severely by some individuals, but as a general method of extorting profitable work from a reluctant slave, it can never have been efficacious. If applied with the frequeney with which the cart-whip is applied in Georgia or Carolina, it would soon cease to be any punishment at all. In what light, too, these punishments were looked upon by the lawgiver himself, is manifest from the following passage of Menu: "A wife, a son, a slave (mistranslated servant by Sir William Jones), and a younger whole brother may be corrected when they commit faults, with a rope or the small shoot of a cane."—*Digest*, ii. p. 324.

The description of persons among whom the slave is enumerated shows clearly the description of punishment to which he was liable in common with them.

For confirmation of the view I have here taken of the Hindoo law, I refer to the compilation by Mr. Sutherland, which will be found in the Appendix to our Report.

I feel, therefore, little doubt that slavery in Bengal (if indeed slavery be not an improper name for such a condition) has subsisted for ages without any such power being vested in the master as would enable him to extort productive labour; and I believe that the power of parental correction which he possesses, when it has not already been taken from him by judicial discretion, may be taken from him without any real injury to his interests. I do not mean to say that it may not be convenient to the master, in the government of his household,

but

No. V.
Powers of a Master over his Slave.

but I think that the great liability of such a power to run into excess when it is exercised against adults, more than counterbalances any good to the master which can result from it when confined within its legal limits.

I have been considering the proposed law with reference only to those inflictions by the master on his slave which have the correction of the slave for their object. But a master has, by the Mahomedan law, a right of a different kind over his female slave, of which the abolition ought to be universally and certainly known. The answer of the muftees, from which I have quoted above, is of such a nature, where it touches this topic, as to be expressed in Latin instead of English, in the translation from the original Persian. I need not allude to it further than to remark, that in it is implied that the master may compel his female slave to be his concubine. Of course no court of justice under our Government would hold such a law any justification of an act of violence or a course of persecution: but I think, nevertheless, that it may be reckoned among the advantages of the proposed law, that it will include a distinct negation of so monstrous a right.

I am not aware that there is any discrepancy between any doctrine of this Minute and what my much esteemed colleagues have said in Note (B.) to the Penal Code.

The doctrine of my Minute, which at first sight may appear at variance with their views, is that the master's power to correct his slave cannot with propriety be abolished by an immediate, special and isolated measure, unless the power is already so limited as to have no substantial value; because if the power had a substantial value, it might be proper to accompany its abolition with other measures. It is true that my colleagues, when they sent up the Penal Code, did not say this; but I think they have not said anything that is inconsistent with it.

(signed) *C. H. Cameron.*

MINUTE by the Honourable *A. Amos*, Esq.; dated 4 February 1839.

Consultations. 4 Feb. 1839. No. 67. On Slavery Examinations.

Knowing the anxiety of the Honourable Court of Directors to be furnished at the earliest opportunity with all the information which has been collected upon the subject of slavery by the Law Commission, in consequence of the recent directions of the Honourable Court, as a member of the Law Commission I beg to lay before the Council a copy of the examinations which have been taken pursuant to such directions, and to observe that the subject continues to occupy the particular attention of the Law Commission.

(signed) *A. Amos.*

QUESTIONS.

Consultations. 4 Feb. 1839. No. 68. Enclosure.

1. Of what place are you a native, and what districts are you principally acquainted with from residence therein?
2. What are the classes of domestic slaves, and what their conditions, according to your observation?
3. What usually is the origin of domestic slavery?
4. Are the sale and purchase of domestic slaves frequent amongst the Hindoos or Muslims?
5. By what means are recusant domestic slaves coerced?
6. In what modes are domestic slaves usually worked?
7. Does agrestic slavery obtain at any places with which you are acquainted; what is its character, and what classes of people are such slaves, and what is the origin of their servile state?
8. Are agrestic slaves regarded as bound to the soil, and may they be sold or removed at the pleasure of the master, and are such sales and removals frequent?
9. In what modes are they worked and coerced?
10. Is manumission often practised, and is it desired by the slave?
11. Is the slave entitled to acquire property for his own use?

12. Are

No. V.
Powers of a Master over his Slave.

12. Are domestic or agrestic slaves married with observance of rites, and is it a duty of the master to provide for the marriage of his male and female slaves; and when the slave husband and wife belong to different masters, or when the husband is free, by what rule is the ownership in their children regulated?

13. If a female slave be married to a freeman, or the slave of another person, has the husband any right to remove or retain his wife?

14. Can you mention any judicial decision or orders by magistrates passed in regard to questions between master and slave?

15. What is the general character of the treatment of slaves, domestic and agrestic, in respect to diet, clothing, care and support in illness and old age?

16. Can the slave, infirm from old age or other cause, assert a right to support on his master?

17. Does ill usage give the slave a legal right to emancipation?

18. Are slaves often let out to hire, or mortgaged?

19. What are the usual forms by which slaves are transferred?

20. Have any instances of transfer of slaves under contracts for hire for long or short periods, come under your notice; and under any circumstances is such a contract popularly considered as operating an absolute sale?

21. Does the issue of a slave, the subject of such contract, become the property of the hirer?

ADDITIONAL QUESTIONS.

HAS the slave a right to food, clothing and shelter from the master? If withheld, how does he obtain redress? Can he, under such circumstances, transfer his services to another; or is it good ground for emancipation? Is cruelty or hard usage ground for emancipation? By whom are the funeral expenses of a deceased slave defrayed? Is the master prohibited from requiring any particular service from his slave? any affecting caste? Concubinage? Has a slave a right to any portion of his time in which to work for himself? When a separated slave is called on to perform other services than to attend at marriages, festivals, &c., does he ever receive hire for such extra service? Have these separated slaves usually a spot of free land given them (nankar) for the erection of their houses?

Which is cheapest, the services of a male or female slave, or of a free servant? What the expense of each? If dearer, wherein the advantage of slave service? Are male slaves ever retained merely for the purpose of retaining the females? Are female free servants for domestic work easily procurable? Are slaves frequently employed as confidential servants in the superintendence of household; or gomastahs, tehsildars, mooktears, &c.?

Can a person, becoming a slave for debt, or by selling himself, redeem himself by paying the principal debt, or with interest, or on repayment of the purchase-money? or can parents redeem their children, sold during distress, by repayment of the purchase-money, or with interest, or with expenses incurred?

Is slavery of Mahomedans confined to any particular class or classes of Mahomedans? Do Mahomedans circumcise their Hindoo slaves?

Is there any kidnapping going on for the purposes of slave trading? if so, whence and by whom committed?

What proportion do the slaves bear to the whole population? does not every respectable Hindoo and Mahomedan family keep slaves according to their ability?

Marriages.—With whom is the marriage of a female slave generally contracted; ever with a freeman? Who defrays the expenses of the marriage?

If she is married to a freeman, does she become free? if so, how is her master compensated?

*If a female slave is married to the male slave of another, do they live together; does each continue to serve his and her own master? If not, how is the master who loses his slave's services compensated? Does a male slave ever marry a free woman, &c.? if so, does she become the slave of his master? Does one person, slave or freeman, ever marry several slave women? Are you aware of the practice of "punwah shadee," "beakara," or "punwah Battur," professional bridegroom?

Offspring.—To whom does the produce of the marriage of two slaves, different masters, belong?

To the master of the male or female slaves? or the male issue to the one, the female to the other?

Does it depend on which master pays the expenses of the marriage?

To whom the issue of a marriage between a female slave and a freeman?

Between

* Are the daughters of female slaves usually married to freemen; and does the master, in such cases, receive a douceur for the bridegroom, called "Meneebanah," and thus relinquish all right over her?

Between a male slave and a free woman?

To whom, in case of a "punwah shadee?" Has the beakara a right to every alternate child? Are the female children necessarily slaves? or may they, on attaining maturity, dispose of themselves to whom and how they please? On the marriage of a male or female slave, is it ever stipulated with the master that the offspring shall not be slaves? Is it ever stipulated at such marriages that the parents shall be at liberty to sell or otherwise dispose of their female issue to whom they like?

Transfers.—Is the transfer of slaves by sale frequent; and what the usual prices? Is it unlawful for the master to sell (mortgage or let) his slave beyond a certain distance, *i. e.* the next village or pergunnah; or is his right unlimited in this respect? Would it be considered hard if he sold his slave to a resident of a distant zillah? Are there any *adscripti glebæ* who cannot be sold separate from the land? May slaves, when unwilling to go to the new purchaser, select a purchaser of their own, and can the master object to this; or may they in such cases purchase their freedom? In case of a sale, does any property possessed by the slave go to the new master, or remain with the old?

Can married slaves be sold, so as to separate them, the husband from the wife? Can children be sold (or given away) so as to separate them from their parents before a certain age, and what age? Are slaves sold by auction in execution of decrees, or for arrears of revenue or rent?

Mortgage and Leases.—What are the conditions of mortgage, and as respects the children living at the time, or thereafter born? Are long leases frequent with Hindoos and Mahomedans? How many years? Why, case? What becomes of the children; does it bind them for ever, or for a time? "Izaranamahs," "purmbhatten" (deed of sale), who maintains the slave during mortgage? Suppose he dies or becomes disabled, how does that affect the contract?

Are short leases practised? how long? at what rate?

Prostitution.—Are sale or hire leases for this purpose lawful?

Mock Marriages.—

List of Witnesses examined on Slavery.

No.	Date of Examination.	NAMES.	NATIVE COUNTRY.	OCCUPATION.
1	28 Dec. 1838	Raj Govind Sen -	- - Pergunnah Sarael, village Chuntoor, Tipperah.	- - Mookhtear of the Rajah of Tipperah.
2	28 Dec. 1838	Tek Loll - - -	- - Behar, village Futtehpoor, pergunnah Putchroke.	- - Mookhtear in the Sudder Dewanny Adawlut, Calcutta.
3	2 Jan. 1839	Vydia Nath Misser -	- - Tirhoot, pergunnah Dharour.	- - Pundit of the Presidency Sudder Dewanny Adawlut.
4	2 Jan. 1839	Hamud Russool -	- - Behar district, Patna, pergunnah Sanda.	Vakeel of ditto.
5	12 Jan. 1839	R. H. Mytton, esq. -	- - - - - -	Magistrate of Sylhet.
6	15 Jan. 1839	Dhurb Singh Das -	- - Pergunnah Cuttega, northern Cuttack.	- - Ooriah Missulkhana in the Presidency Sudder Dewanny Adawlut.
7	18 Jan. 1839	Kashee Nath Khan -	- - Village Satteen, pergunnah Khatta Rajshahye.	- - Agent of the Ranees of the late Rajah Bishen Nanth, of Natore.
8	22 Jan. 1839	Hy. Ricketts, esq. -	- - - - -	- - Commissioner of Revenue and Circuit, 19th Division, Cuttack.
–	25 Jan. 1839	Tek Loll - -	Continuation of the examination of.	
9	29 Jan. 1839	Ram Krishna Putnaik	- - Village Burmukhundapore, pergunnah Sarael, near Pooree, southern division.	- - Mookhtear in the Sudder Board of Revenue, Calcutta.

(signed) *J. C. C. Sutherland,*
Secretary, Indian Law Commission.

No. V.
Powers of a Master over his Slave.

28th of December 1838.

Raj Govind Sen, Mookhtear of the Rajah of *Tipperah*.

I AM a native of the pergunnah Sarail, village Chuntoor, in Tipperah.

I am acquainted with the districts of Tipperah, Sylhet, Mymensing, Dacca, and Chittagong.

In these districts there are two classes of slaves, the kayet and chundal.

The distinction between them is, that the kayat is pure, and the superior castes can receive water from him. The chundal is impure, and can only be employed in out-door work.

A slave is either so by descent or by sale; a free person may be sold either by both his parents, or the survivor of them, or by himself.

A free person who has attained majority cannot be sold unless with his own consent.

These sales of freemen only take place in time of calamity.

Sometimes the consideration for which a freeman sells himself is marriage with a slave girl whom the master will not permit him to marry upon other terms.

Sometimes free persons are sold by themselves or by their parents to Mussulmans, and become Mussulmans. But no adult, even if already a slave, can be sold to a Mussulman without his own consent.

If a kayet slave were converted to Islamism, he would become unfit for domestic use, but would continue a slave, and might be employed out of doors by a Hindoo master.

I am not aware that there is any importation of slaves for sale in the districts of which I speak; though sometimes people going to Assam buy slaves there, and bring them back with them.

The price of a young kayet woman varies from 40 rupees to 100; that of a young man from 20 to 40.

The price of a young chundal woman varies from 10 to 20 rupees; that of a young chundal man is about the same.

The cause of the high comparative value of the female among kayet slaves is, that she attends upon the ladies of the family.

The price of a kayet female child is from 20 to 30; that of a male child from 10 to 25 rupees.

That of a female chundal child is from seven to 10; that of a male child the same.

There is in Sylhet a class of out-door slaves who are Mussulmans; I believe they are low caste people who have been converted, but have retained their servile state.

Slaves are very numerous in these districts; a family of respectability will frequently have from 10 to 25 families of slaves, and there is no family of respectability, either Mahomedan or Hindoo, that has not at least one family of slaves.

I should say one-fourth of the population are slaves.

Many slaves are not required to do regular work for their masters, but only to attend at festivals.

There is generally a reciprocal regard between master and slave, and the master treats his slave with more kindness and attention than his hired servant.

In general it is considered derogatory to sell a slave, but it is done when the owner is in distress.

It is customary on the marriage of a daughter to give one or two female slaves as her attendants.

If a slave gives offence, it is usual to give him a slap or a blow with a shoe.

I never heard of a case of manumission, but a master sometimes expels his vicious slave.

Slaves are married with the same ceremonies as free persons of the same class; and when the husband and wife belong to different masters, it is usual for the owner of the woman to give her to the man's master, receiving a present, which is always less than her value.

If this kind of marriage take place without the consent of the woman's master, the offspring are all his slaves.

Sometimes female slaves are married to persons whose profession it is to go about as the husbands of slaves; these persons are called Byakara, and this kind of marriage is called Punwah Shadi. The offspring of this marriage are the slaves of the woman's master. The byakara is generally a slave, but receives to his own use what he earns as a byakara; he comes to each of his wives about once in a month or two, and receives at each visit sustenance and a present; he receives at each marriage four or five rupees.

It is not usual to let slaves to hire; but I have heard that beyond the limits of the Company's territories, in the hill country of Tipperah, Munnypore and Jintea, that custom prevails.

In a case which was decided in appeal, in the Nizamut Adawlut, in 1837, certain slaves were restored to their owner; the name of the case is, "Photea and Others (the slaves) *v.* Musnud Ali, Zemindar of Sarail," whose agent I was.

A nephew of mine brought an action against a slave of his and two persons to whom the slave had clandestinely given his own daughters in marriage; the object of the suit was to recover the two female slaves; the suit was compromised.

In another case, of which the circumstances were the same, the master got a decree in the zillah court of Tipperah, and recovered his female slave.

I have been 18 years in Calcutta, and only know these cases from hearsay.

No. V.
Powers of a Master over his Slave.

28th of December 1838.

Tek Loll, Mookhtear in the Sudder Dewanny Adawlut, *Calcutta*.

I WAS born in Behar, in the village of Futtehpore, purgunnah Putchroke.

I am acquainted with that district, and the adjoining districts.

Of Hindoo slaves there are two classes; in Behar, the kuhar and the dhanuk, which is also called Juswur Kurmi; these are both inheritable, and are transferable by sale. By the local custom of Behar, free persons, whether infant or adult, of these two classes, may be sold by their maternal uncles or maternal grandmothers, not by their parents.

No one would buy a free person of these classes, unless the maternal grandmother or maternal uncle were present at the delivery, and consenting.

The mother has a veto upon the sale, but not the father.

The maternal grandmother has the prior right to sell.

She being dead, or permanently absent, then the maternal uncle.

These sales take place not only in times of calamity, but at all times.

Bun vickree is one kind of these sales, which takes place when the subject of the sale is absent from his family, and cannot be got at.

The consent of the subject is quite immaterial, and is not asked.

The price is lower when the sale is bun vickree, on account of the risk the buyer runs of not getting possession of the person sold.

If a person thus sold were to refuse compliance, the buyer would coerce him, and I should think the magistrate would support the buyer in doing so.

I do not know any case of the kind, of my own knowledge, but I have heard of such cases.

The kuhar and juswur kurmi sometimes sell themselves to their creditors, or for the purpose of paying their creditors with the price.

These sales take place not only to Hindoos but also to Mussulmans, or other persons.

When a Mussulman is the buyer, and makes a convert of the slave, the slave is called Moollah Zadah.

I have known Mussulmans buy slaves brought from other districts; but a Hindoo would not do so, because he would not be sure of the slaves' caste, and would fear pollution. The slaves thus brought from other districts are generally children.

Besides those who have thus become slaves from freemen, there are many who are slaves by descent; these have all descended from persons belonging to the kuhar or juswur kurmi, and who have been sold in the manner described.

In case of scarcity or famine other castes sometimes give up their children to be brought up by persons in good circumstances; but no price is given, and the children are not slaves, though they perform services in the house.

Sales of free persons, as above described, are very common, and so are sales of persons already in slavery.

The only difference between the kuhar and the juswur kurmi is, that the former being of inferior caste carry palanquins, which the latter do not; with this exception, they are both employed in the same menial offices and in agriculture.

The price of slaves of course varies much according to circumstances; but the price of a young female may be from 50 to 125 rupees; and that of a young male about a third less. The cause of the difference is, that the girl may have children, which will belong to her owner.

Children of from six to eight sell for from 10 to 15 rupees, the price of females exceeding that of males in about the same proportion as above.

The pergunnah of Putchroke contains about a lakh of people; I should think the proportion of slaves is about one-eighth; probably the same proportion may prevail in the rest of the zillah.

If a slave will not work, he is coerced by threats, by flogging, and by stopping his rations.

The usual character of slaves is obedient, but sometimes slaves are refractory.

In agricultural labours slaves are generally mixed with free labourers, and no greater quantity of labour is exacted from them; both work the whole day, with short intervals for refreshment.

2d of January 1839.

Vaydia Nath Missur, Pundit of the Sudder Dewanny Adawlut, *Calcutta*.

I AM a native of pergunnah Dhar, our zillah Tirhoot.

I am well acquainted with that zillah, and have some knowledge of the adjoining districts of Sarun and Poorneah.

The slaves in Tirhoot are all kyburts, but they are subdivided into kyburts proper, dhanuk, amot and kurmi.

Kyburt, in common parlance, is pronounced keeot.

Many people of these castes, however, are free.

No. V.
Powers of a Master over his Slave.

The origin of all this slavery must be traced to self-sale, or self-gift. I arrived at this conclusion by comparing the actual state of things with the doctrine of the Shasters.

By the Hindoo law a Brahmin cannot be a slave to anybody; a khetrye, or byse, might be, but I never heard of any that were.

The slaves of the several classes mentioned are nearly the same in regard to purity, and are employed indifferently in in-door and out-door work.

There are no slave castes in my own country, nor does the Hindoo law recognise slavery as incident to caste.

Many of the slaves of great families are settled on the estates, and are not required to perform any service except attending at ceremonies, and defending their master in case of need; they pay rent, but less than is paid by free persons; they have, however, no right to any part of the produce of the land, nor to any property as against their master; and if he is angry with them, he sometimes takes everything from them.

The rajah of Durbhunga has a great many slaves; many free people of the castes specified are in the habit of applying to be put on his list of slaves; their object is to obtain the offices of gomastahs and tehsildars.

I know of no text of Hindoo law which gives the slave a right to sustenance from his master, but all masters do maintain their old and infirm slaves; and I think, as this is the established custom, a court of justice would decree maintenance to a slave if it were refused; but I know no case in which the question has been brought before a court; indeed slaves are generally more favoured than other servants.

The practice of self-sale is now frequent; the transaction is recorded by an instrument called param bhatarak; the price in these cases is the absolute property of the slave, and descends to his heirs, which is also the case with all property of which the slave may have been possessed previous to the sale.

The sale of free children by their parents only takes place in cases of great distress, and would be invalid in other circumstances by Hindoo law; only the castes above mentioned sell themselves or their children.

My paternal grandfather died, leaving five sons; they divided the property, and among other things eight families of slaves. One of my uncles died, and his slaves fearing that they would be shared among the other brothers, and that their families would thus be separated, fled away to Dahampore, in Purneah, which is on the estate of the durbhunga rajah; my eldest uncle, the head of the family, went after them to induce them to return; they agreed to do so, but the head of the family dying at that time, they did not come back. The death of this uncle took place about 30 years ago, and since that time my other uncles, my father and my elder brother have written occasionally to the rajah's manager to claim the slaves; we have sent messages, and they answer, "We will come." We have never sued for them, because it would be expensive if the courts do not favour the claims of masters to slaves; and another difficulty exists in this, that we are a numerous body of kinsmen, having a joint undivided claim on several families of slaves.

Those of the slaves who have acquired no property, say they are ready to return, but those who have made acquisitions refuse.

It would be considered disrespectable in us to take the acquisitions of these slaves, which by law belong to us.

I am one of an undivided family of four brothers; we have in our household 13 slaves, three who descended to us, and 10 whom we bought; besides these, and besides those above mentioned who went away to Derhampore, there are two families consisting together of 10 or 12 individuals, who belong to us, my aunt and my sister; they are settled on another part of the durbhunga rajah's estate, but they come to us whenever they are summoned to attend at festivals; we do not support them.

The chastisement of a slave ought to be the same as that of a son, that is, by the half rattan, or by tying him up by the hands. But it may be inferred from the power which the Shasters recognise in the master to exact work, that he may punish the slave who refuses to work, and it is the duty of the ruling power to make the master and slave both perform their duties. One of our slaves ran away, and my brother applied to the magistrate to have him restored; this took place about 20 years ago; the magistrate issued orders to the darogahs, but the slave escaped into the Nepaul territory. The slave afterwards, on hearing that I was established in Calcutta, came and joined my household; my brother then wrote to me to inform me of his having run away, and to beg me to turn him away, but I kept him notwithstanding.

I do not know any case of manumission, but I have heard of manumissions where the slave had done something with which the master was much pleased. When a slave saves his master's life, he is *ipso facto* manumitted, according to the Hindoo law, and in such case the slave is entitled to share in the master's property as a son.

Slaves are employed generally in menial offices, with the exception of cookery, which would be impure if performed by a slave. Poor persons who have no slaves hire persons to do such work, but slaves are preferred by those who can afford to purchase them, because slaves have permanent attachment to the family.

In general, I think it is more economical to be served by slaves than by hired servants.

A master is in general more disposed to favour his slave than a hired labourer, from whom he generally exacts the full measure of work.

A severe master might oppress his slave in a way which a hired servant of the same caste would not submit to.

The slave has no right to any portion of his time.

A slave

No. V.
Powers of a Master over his Slave.

A slave who does not work regularly for his master, but is only called upon to attend at festivals, or to do other occasional service, receives when so called upon the same rations as a freeman, and wages, but not so high as those of a freeman.

No absolute slave has a right to purchase his freedom, but sometimes there is a stipulation for redemption in the contract of self-sale, or of the sale of a child.

I have never heard of a class of slaves called Moollah Zada. The Hindoo slaves of Mussulmans remain Hindoos.

By the Shasters, property in slaves (or bipeds, as they are called) is treated with the same respect as immovable property, and is transferred with equal formality, consequently no one buys without full inquiry; and in the conveyance all the particulars are recorded. When a slave is bought of a stranger it is usual to require that some known person should become surety that the seller has a right to sell.

Perhaps one or two-sixteenths of the whole population of these districts are slaves; but the great majority of the Khyburt caste are slaves. Almost all respectable families have slaves, even those who are in a state of decay.

The same rites are observed at the marriage of slaves as of other sudras, and the master is under a moral obligation to provide for the marriage of his slaves as of his children. The parents of a young slave are consulted as to the choice of a bride or bridegroom. Illegitimate children of a slave woman are slaves of the woman's master.

When two slaves of different masters intermarry, there is usually a stipulation between the two masters respecting the ownership of the children; where there is no stipulation the male children follow the father, the females the mother.

There is frequently a special stipulation respecting the ownership of the children, depending upon the expenses of the marriage being all paid by one party, or some such cause.

If a free person of either sex marry a slave, without stipulating for freedom with the master, such person becomes a slave; but if such person stipulates for freedom, then the children are slaves or free according to their sex. I am stating the law as laid down in the Shasters, but I have heard that the practice is conformable to it, though I do not know any case of my own knowledge.

If a male slave marry the slave of another master without his consent, such slave may, nevertheless, have access to his wife, but so as not to interfere with her service more than conjugal rights necessarily require.

The practice of the punwah shadee is known in the districts of which I speak.

The sale of slaves is very common, but it is becoming less so, because the leaning of the courts against slavery deters people from purchasing. The probability that the courts will not enforce the rights of the master, has caused the price of slaves to fall considerably.

The present average price of a young girl is now from 25 to 40 rupees, and it used to be from 50 to 60 rupees. The price of a young male of 18 to 20 is from 16 to 20 rupees, and was from 30 to 49 rupees.

It would be considered oppressive to sell a slave so as to place him beyond the reach of communication with people of his own class, or to separate families. The courts ought to interfere to prevent such sales.

There are no slaves adscript to the soil.

I know no instance in which slaves have been sold in execution of a decree, or for arrears of revenue or rent; but I see nothing illegal in such a proceeding.

I am not aware that slaves are ever hired out, but the interest of a debt is sometimes paid by the services of a slave, the above remaining in the possession of the debtor, who continues to maintain the slave.

The mortgage of slaves is legal, but not much practised, not being convenient.

If a mortgaged slave die, the loss falls upon the mortgager, and he must provide another slave; but if the death be occasioned by the fault of the mortgagee, then the loss falls upon him.

Sale for the purpose of prostitution is of course illegal, because a prostitute necessarily loses caste.

2d of January 1839.

Hamid Rupool, Vakeel of the Sudder Dewanny Adawlut, Calcutta.

I AM a native of Behar, district of Patna, pergunnah Sanda.

I am acquainted with other districts of Behar, viz.: Ramghur, Behar Proper, Shahabad, and Tirhoot.

There are two classes of Hindoo slaves, kahar and kurmi; the kahar are principally domestic slaves; many of the kurmi have separated themselves from their masters, owing to the decay of the master's family, and have established themselves as cultivators upon their own account. The right of the master to these slaves remains, nevertheless, and may be asserted.

The slave generally returns to service when required; if he refuses, and a breach of the peace arises, and the case comes before the magistrate, he would, if he had no doubt about the slavery, pass an order for the delivery of the slave to the master; if he had a doubt, he would tell the master to bring his action in the civil court. I do not know any instance of this of my own knowledge, but I have heard of such instances.

No. V.
Powers of a Master over his Slave.

I remember a case in the zillah Behar, when one Afzul Ali, a muslim, applied to the magistrate, and being referred to the civil court brought a regular action in the zillah court against the slave (a girl), and Sulamut Ali, the person who was harbouring her. He got a decree, and the girl was restored to him.

The great majority of kurmis are absolutely free; but, as far as I know, a free kuhar does not exist, though many have left their masters and are practically free. But these, when claimed, never pretend to be goorwa or unowned. They are sold by their owners, but never by any one else.

The sale of free children is rare, but in times of extreme distress even Brahmins, Khetrees, and Syuds will sell their children. I have heard that this occurred in the great famine in the Fuslee year 1177. At present only the lower classes sell their children when urged by distress.

The sale of high-caste children is not considered valid in law, and I have heard that the purchasers of such children, in the great famine, returned the children when they discovered that they were of high caste.

By strict Mahomedan law no one can be a slave but a Cafir taken in battle; but by popular recognition the sale of a Mahomedan child of the labouring classes is permitted. The law is evaded by framing the deed as a contract of hire for a long period. The same form is used in the sale of a Hindoo, for in Behar the Mahomedan forms of contract and conveyance have been generally adopted.

The offspring of a person thus sold is free. My grandfather bought a female kuhar in this manner; she remained in our family as a slave till her death, but we have no right to her children. They did service in our family and were supported by us, but they are free.

I have never known a contract of this sort in which any mention was made of future offspring, but I have known cases in which men have sold both themselves and their existing offspring by the same deed.

I have never heard of any importation of slaves into zillah Behar or Patna, and people do not buy slaves from unknown persons.

If a slave refuses to work, the master corrects him with a slap on the face or a rattan; if the slave is incorrigibly obstinate or vicious, he is turned away. This rarely happens. Slaves perform menial offices in the house, including cookery, when the master is a Mahomedan. Slaves are also employed in agriculture.

Manumission is rare, and not generally desired by the slave; but it sometimes happens that a master, anticipating, from the evil disposition of his children, that they will maltreat the slaves, manumits such of them as he has a regard for.

The slaves of great people frequently appear to possess property, but I suppose in law it is the property of the master. I know of no case in which the right to such property has been disputed between master and slave.

A master has no right to exact from his slave offices which are unsuitable to his caste, and I presume the slave would be protected in refusing to perform such offices.

The Mahomedan master has a right to exact the embraces of his female unmarried slave of the same religion, but not of a Hindoo slave.

If a slave so subjected to the embraces of her master has a child by him she is called umul would (the mother of offspring), and becomes free. The offspring inherit as legitimate children.

Slaves are not entitled to any time to work for themselves.

A slave who is separated from his master is entitled to food and clothing if called upon for some occasional service, and he also commonly receives a present.

I think upon an average that there is some economy, and certainly some comfort in being served by slaves rather than free people, particularly female slaves. In the country female free servants are not to be procured. Both males and females of the lower classes think it derogatory to them to take menial service, and to the females in particular it is disreputable.

Slaves are frequently employed in offices of trust; they are generally more trusted than free servants.

A man who has sold himself into slavery has no right to redeem himself without his master's consent.

Nor has the parent of a child which has been sold any right to redeem the child.

Syuds* and sheikhs, and patans and malaks† are the only Mahomedans who cannot be slaves according to the custom of the country.

A Mahomedan master employs a Hindoo slave in out-door work, and does not interfere with his religion.

The proportion of slaves in the above districts may perhaps be about five per cent.

All respectable families, whether Hindoo or Mahomedan, have slaves.

It rarely happens that a Hindoo slave is converted and becomes molla zada; I never saw one.

The same rites of marriage are observed among slaves as among free men, whether Hindoo or Mahomedan, and it is the duty of the master to provide a spouse for his slave, and to pay the expenses of the marriage.

In

* The descendants of the prophet, and the descendants of his companions.
† Descendants of persons who have received titles from the sovereigns.

No. V.
Powers of a Master over his Slave.

In the absence of any special agreement the master of the female slave is entitled to the offspring.

So also, if the husband is a free man and there be no special agreement.

It is not usual to make special agreements as to the distribution of the offspring.

I never heard of a free woman marrying a slave.

I am speaking of the slaves of Mussulman masters, whether such slaves be Mussulmans or Hindoos.

The husband of a slave woman has no right to remove his wife from her master's household, but he is entitled to have access to her.

Slaves are generally well treated; the old and infirm are entitled by law and justice to support and care. I have never heard of this right being enforced by application to a court.

Cruelty to a slave does not entitle him to emancipation, but the magistrate ought to interfere to prevent and to punish it.

The withholding of support, or the inability to give it, would authorize the magistrate to set the slave free.

It is thought disreputable to sell slaves, but not to buy.

The price of a Hindoo slave girl is from 30 to 100 rupees; that of a young male from 25 to 40.

It is not usual to sell slaves to purchasers living at a great distance, nor to separate families.

According to usage a slave about to be sold is allowed to object to the purchaser, and to choose any other who is willing to pay the price, and the master ought to give the slave time in such case to find a purchaser; if, however, the slave cannot find one, the transaction must proceed.

I know of no class of slaves who are adscript to the soil.

It is not the custom to sell slaves in execution of decrees, or for arrears of rent and revenue.

The practice of letting slaves to hire, or mortgaging them, does not occur in my country.

Procuresses sometimes kidnap children for the purpose of prostitution.

It would be disgraceful in a Mahomedan master to sell a girl for that purpose; it is also contrary to Mahomedan law.

12th of January 1839.

R. H. Mytton, Esq., Magistrate of Sylhet.

I WAS three years in Sylhet as magistrate and collector.

Sylhet is under ryotwarry settlement, and every meerassidar has in his family one, two or three slaves.

It is considered as a mark of distinction to possess slaves, and a man's slave is the last thing he will sell.

The number of registered meerassadars is a lac and a quarter; but amongst them are many under-purchasers who are of an inferior rank and station, and do not possess slaves, though they call themselves meerassadars.

I cannot say what is the number of registered meerassadars; for these reasons it is extremely difficult to estimate with any accuracy the number of slaves.

It is not common to sell a slave against his own consent, nor to sell one to a person residing at a great distance.

Complaints have sometimes been made to me by mothers that their master was about to sell their infant children, so as to separate them; I mean children of an age to require parental care. In such cases I have interfered to prevent the master from doing so. I have never found it necessary to do more than issue an order. I doubt whether it would be legal to enforce such an order by punishment.

I never recollect a case of the separation of husband and wife coming before me.

The greater part of the whole population is Mussulman, and so is the greater part of the slave population.

I never heard the term moolazada.

A great many Hindoo masters have Mussulman slaves, but very few Mussulman masters have Hindoo slaves.

The greater part of the poorer classes is Mussulman, and it is of course these classes who sell themselves and their children in times of scarcity. They do not object to selling themselves to Hindoo masters.

The slave population is principally employed in agriculture.

The condition of slaves differs very little from that of freemen of the same class.

I never heard of any slaves who are *adscripti glebæ.*

I never heard of a case of manumission.

By law, I believe, the master is entitled to all the slaves' earnings, but in practice it is very common for slaves to possess property. Some are burkundauzes receiving government pay to their own use; some are holders of lands under their masters and pay rent.

The master can by law compel his female slave to marry against her consent; indeed both slave and free children are generally married at an age at which they are incapable of giving consent.

No. V.
Powers of a Master over his Slave.

Female slaves are frequently married to men whose profession it is to go about as the husbands of slaves. The object of this arrangement is, that the slave girl may remain in her master's house, and that all her children may belong to him.

These itinerant husbands receive a present at the marriage, and they are maintained, while visiting their wives, by the master.

The master is bound by law to maintain his old or infirm slave, and the general feeling would be strongly against the neglect of that obligation. I have never been called upon to enforce it as a magistrate.

I think there is no importation of slaves into Sylhet, nor do I think there is any exportation to foreign countries; but certainly, and particularly in years of scarcity, there is some exportation into the adjoining districts.

I think it would not be expedient to prevent this, inasmuch as to alleviate distress.

I do not think Regulation III. of 1832 applicable to such cases, because this is not importing from one province to another, and because, under the circumstances under which it takes place, it cannot, I think, be called removal for purposes of traffic.

There is also a practice of inveigling slaves, principally women and children, away from their masters, carrying them away and selling them in the adjoining districts, especially in the pergunnah of Brickrampore, near Dacca, which is inhabited by respectable Hindoos, Brahmins and Kayits, amongst whom there is a great demand for such slaves.

Whenever a case of this kind has come before me I have always punished it as a theft, and I believe this has been the practice of my predecessors. I have had many such cases before me.

There are many persons who are legally slaves, and who may be reclaimed by their masters, but who are practically free, and living in residences of their own.

There are others who are in states intermediate between complete slavery and that which I have just described.

The usual way in which a man sells himself is by a deed purporting to lease his services for a long term, nearly 100 years; in general the deed is called a khadagiri pottah.

In India it is common to borrow money, the borrower mortgaging his services for a short term of years.

Cases have come before me where free female children have been sold for purposes of prostitution. I have always interfered to prevent the completion of such sales, and I think I have bound over the parents in recognisance not to sell the children.

I never heard of slaves being sold in satisfaction of a decree, or for arrears of revenue or rent.

15th of January 1839.

Durb Singh Das, Oriah Missul Khan in the Calcutta Court of Sudder Dewanny Adawlut.

I AM a native of pergunnah Cutteya, in the northern division of Cuttack.

Since 1819 I have held various official situations in that province, where I remained till November 1837, when I attained my present appointment in the Sudder.

There are two classes of persons in Cuttack who generally keep domestic slaves, Mussulmans and Kaets; the latter are subdivided into Myntia or Oriah-Kaits, the Bengallee, and Lalla or Western Kaits.

There are also some rajahs and zemindars who are Kundaits, Rajpoots and Ketryas, who keep such slaves, but no Brahmin does so.

Before the Mahratta invasion of Cuttack, the Rajah Pursuttum Dheo prohibited Brahmins from keeping slaves. I do not know the reason of this prohibition, but since that time no Brahmin keeps a domestic slave.

The Byse also never keep domestic slaves; it is contrary to the principles of their caste.

The domestic slaves consist of such low castes as are considered impure.

The impure castes are employed exclusively in out-door work; all classes of people who can afford it keep these slaves, and they are constantly sold from hand to hand.

The pure castes are, Chasa, Khundait, Gualah, Tanti, Agori, Bas Bania, Ninsala: the impure castes are, Dhobee, Chumar, Ghoka, Kyut or Kyburt, Raree, Pan, Kundra, Napit Bhagti, Hari, and Dome.

All kinds of slaves are constantly sold; but according to popular recognition the consent of the slave is necessary.

This custom has arisen from a proclamation issued in 1824 by Mr. Robert Keir, who was Commissioner of Cuttack.

A slave who was sold against his own consent ran away; the master used force to coerce him; he complained to the magistrate, who gave him no protection; he then appealed to the Commissioner, who gave him his liberty, fined the purchaser, and issued the proclamation of which I have spoken.

The proclamation declared the sale of slaves illegal.

Since that time, I think in 1829 or 1830, a slave complained to Mr. Forrester, the magistrate, who declared a deed of sale of a slave to be unlawful, fined the purchaser, awarded costs from him to the slave, and referred the purchaser to the civil court to recover the price he had paid from the seller. This is the only case I remember since the proclamation. The effect of the proclamation has been not to put an end to sales, but to prevent their taking place without the consent of the slave.

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No. V.
Powers of a Master over his Slave.

There are Mussulman slaves who are the illegitimate offspring of women of low castes, whether slaves or free women, by Mussulmans.

The offspring of a Mussulman and a low-caste woman has no right to inherit from his father, unless the ceremony of marriage has been performed between his parents.

There are also Mussulman slaves who have become so by conversion, having been bought from their parents or masters in childhood.

The origin of Hindoo slavery is, sale of free persons by themselves or their parents. People do not usually sell themselves or their children unless pressed by necessity. This kind of sale is not uncommon at the present day.

The purer classes of slaves are sometimes employed in out-door work as well as in-door. In such cases they work separately from the impure classes, by whom they would be contaminated. If a man of pure caste accidentally touches one of impure caste, he must purify himself by washing.

It is usual for people of impure caste in going along the road, if they meet a man of pure caste who happens not to observe them, to give warning, saying, " Good sir, I am of such and such a caste, you had better retire."

Formerly the impure castes lived in separate villages, and gave way whenever they met a person of pure caste on the road; but since the country came under the Company's government they have become more independent.

If a slave refuses to work or otherwise misbehaves, the master corrects him by beating him with the hand or a cane, or by tying him up for an hour or two.

I never heard of a complaint being made by a slave to a magistrate of ill-treatment.

Emancipation is not uncommon when a master is much pleased with a slave. In that case, if the slave was purchased, the master gives him the deed of sale; if there is no such deed, the master executes a farigh khatte, or release.

No time is allowed to the slave to work on his own account, and anything he may acquire belongs to his master.

The marriages of slaves take place with the same rites as those of freemen of the same caste, and the expense is paid by the master. Upon the death of slaves of pure caste the master also provides the funeral feast.

The usual practice is for the master to buy a husband or wife for his slave; but when a marriage takes place between the slaves of two different owners, the owners take the offspring ultimately; and if the woman ceases to bear, when the number of her offspring is uneven the last child goes to one owner, he paying half its value to the other.

When such a marriage takes place with the consent of the woman's master, she goes to live with her husband, rendering only occasional service to her master; if it take place without his consent, he allows the husband to have access, but the children all belong to him, the woman's master.

I never heard of the intermarriage of a free person with a slave.

The low castes of which I have spoken are in three different conditions; they are either, 1, free, or, 2, actual slaves, or, 3, persons who, having been themselves slaves, or having sprung from slaves, can never escape the stigma of slavery, though they are in the enjoyment of liberty.

Persons in this last condition intermarry with actual slaves, but only when they can purchase them from their masters.

I never heard of byakuras or punwa shadee.

Slaves are generally well treated; their condition is equal to that of hired labourers.

The master is bound to maintain his old or infirm slaves, and I presume the slaves might obtain a decree for maintenance in the civil court.

The master may exact any service which is not derogatory from his caste; it would be derogatory to the pure caste to compel them to work with the impure, and would, therefore, be an act of oppression.

It is more economical to employ slaves than freemen, both in-doors and out-of-doors.

I am an owner of slaves; I have 50.

I give an adult male slave a seer of rice, half a chittak of salt, half a chittak of oil, and one quarter of a seer of dal, or a pice to buy vegetables.

I also give two pice a week for tobacco; two pice will purchase as much tobacco in Cuttack as four annas here.

I also allow them to cut firewood upon my ground; the usual allowance for firewood, when the slave is to purchase it, is half a pice a day.

I give four dhoties, two ungurkhus, one chudder, and one blanket, every year.

This is the usual allowance given to slaves.

They are provided with lodging.

They are trusted with the custody of money and other valuables in preference to hired servants.

There is no redemption in the case of self-sale or sale of children by their parents.

There is a class of persons who agree to serve as slaves for food; they can put an end to their servitude when they please, but the stigma still remains. These people differ from hired servants in respect that they live upon the leavings of the master's table, which degrades them to the rank of slaves.

The children of such people, if born after the servitude commenced, are slaves for ever.

Such people can acquire no property during the continuance of the servitude.

Women become slaves in this way as well as men.

The proportion of slaves to freemen is as 6 to 10; a great zemindar will sometimes have

No. V.
Powers of a Master over his Slave.

2,000 slaves. There are many such. Jamer Jay Chowdree and Baghwat Chowdree, and others: I dare say there are 200 or 250 who have as many.

I have been speaking only of the northern and central divisions of Cuttack. In the southern division there are but few slaves, and they are seldom sold; the great zemindars there employ freemen.

The southern and central divisions are the most flourishing parts of Cuttack.

Land is better cultivated by slaves than by freemen, for the slaves feel that they have an interest in the land.

I attribute the present depressed state of agriculture in North Cuttack to the late inundations of the sea; formerly it was as well cultivated as the other two divisions.

The castes to which slaves of North and Central Cuttack belong exist in equal numbers in South Cuttack.

The price of a young male varies from 5 to 30 rupees; that of a young female is the same.

Slaves of the Gokha caste sell for more than other slaves, because the men are fishermen and the women manage the buying and selling, and are very skilful, and their occupation is a productive one, both to the slave and the master. The Gokha is allowed to retain a large share of the produce, making over the remainder to his master. The Gokha females never sell for less than 50 rupees. The male sells for less, and I cannot tell the reason.

Generally the pure castes bear a higher price than the impure, because they can be employed in domestic occupations.

A boy of five or six sells for one-fifth of the price of a young adult. The same of a girl.

Before Mr. Kier's proclamation, the slave might be sold to a purchaser living at any distance, and the master was not considered to act oppressively.

But even in those times it was not usual to separate families.

There are no *adscripti glebæ*.

It is common to borrow money upon a mortgage of slaves; but the slaves remain in the possession of the mortgager.

It is not common to let slaves to hire.

The old form of self-sale was by a deed of sale; but since Mr. Keir's proclamation it is done by a lease of 60, 70, or 80 years, which is understood to include children born after the lease.

Sale for prostitution is illegal by the Shasters, and is considered immoral and disreputable, though it takes place sometimes.

I knew a case in which a judgment creditor included slaves in the schedule of his debtor's property, for the attachment and sale of which he moved the court. The debtor objected, and Mr. Pigou had the slaves struck out of the schedule, saying they were not fit subjects for sale.

18th of January 1839.

Kashi Nath Khan, Agent of the Ranees of the late Rajah *Bishen Nath*, of Natore.

I AM a Brahmin.

I am a native of the village of Satteen, pergunnah Khatta, district of Rajshahi.

I am principally acquainted with the zillah of Rajshahi, but I have likewise some knowledge of the adjoining districts.

I possessed two slaves; one is dead, and I have now but one.

Most of the respectable people in Rajshahi, both Hindoos and Mahomedans, have domestic slaves.

The Mahomedans have generally Mahomedan slaves.

The Hindoo slaves are of the kybut kait julia mali, and generally of all the low castes.

There is no caste so low as to be incapable of slavery; but the lowest castes are not employed within doors.

The origin of slavery is self-sale and sale by parents or other relations *in loco parentis*, also of a wife by her husband. This sale does not dissolve the marriage; if the husband has access to her, the offspring will belong to the purchaser, who is the owner of the soil*.

These sales, which formerly sometimes took place in Rajshahi, were principally sales of slaves imported from Rungpore and Mymensingh. The sale of slaves domiciled in Rajshahi has always been uncommon.

But about 20 years ago a person was detected in having bought a boy of 10 years old and sacrificed him to the goddess Kali; he was tried, convicted of murder, and executed. This case occurred in Rungpore; but in consequence of it a proclamation was issued by order of the Nizamut Adawlut in Rajshahi and other adjoining districts, prohibiting the sale of slaves in the market. The people supposed that the prohibition was extended to all sales, and in consequence of this understanding, though private sales still take place, yet it is no longer the custom to register them, as it was before the proclamation in the zillah or the pergunnah cazee's office.

Formerly

* This figurative expression has reference to a maxim of Hindoo law, according to which the female is considered as the soil, and the males as the seed.

No. V.
Powers of a Master over his Slave.

Formerly slaves were imported from Rungpore and Mymensingh by itinerant dealers. That traffic has ceased, and now, when a person in Rajshahi wishes to buy slaves, he must either go, or send, or write to those districts, and has some difficulty in finding slaves for sale.

The slaves may be about two or three-sixteenths of the whole population.

Some of the agricultural slaves are fed by their masters; but others cultivate for themselves land which their masters have allotted to them, cultivating at the same time the master's land. In this case, the master supplies cattle and implements of husbandry.

Self-sale does not now occur in Rajshahi; I believe it has ceased in consequence of the proclamation which I have mentioned, and of the inclination of the courts in favour of freedom.

A self-sold slave may be purchased in Rungpore and Mymensingh; but such a slave will probably be told that if he runs away, the courts will not restore him to his master.

Refractory slaves are coerced by threats and beating with the hand or a stick; but this consequence often follows, that some other person who wishes to seduce the slave tells him, that if he complains to the magistrate he will be liberated; and a master, therefore, very seldom beats his slave.

There are no *adscripti glebæ*.

But if an estate is cultivated by slaves, no one would purchase the estate without the slaves.

There are many estates in Mymensingh, in which the greater part of the cultivators are slaves, and there are some such estates in Rajshahi.

I can mention, in particular, the estate of Lush Kurpore. A portion of that estate has been sold for arrears of revenue; the slave cultivators were not sold with the land, and I consider them to be still the property of the old zemindar; but practically they are free ryots, paying rent to the new zemindar.

When slaves are sold with the land, it is usual to have separate bills of sale for the land and the slaves.

I have heard of but one instance of manumission.

The slave cannot hold any property against his master.

Slaves are married with the same rites as free persons of the same caste.

It is the moral duty of the master to provide for the marriage of his male and female slaves. Sometimes the master will buy a wife for his male slave; sometimes he will marry him to the daughter of a freeman, who consents to make his daughter a slave to obtain the favour of the master. The slavery of the bridegroom is not considered derogatory to the bride's family, she being still admitted to communion with her family. Sometimes the master will buy a husband for his female slave.

In other cases he marries her to a byakara, who visits her occasionally, she remaining in her master's house. The byakara has generally several wives of this kind, and visits them in succession. Sometimes this kind of marriage is intended only as a screen to conceal the intimacy of the master with his female slave.

The offspring of a byakara, whether he be free or a slave, belong to the masters of his wives respectively.

It is not usual for the husband and wife to be slaves of different masters, on account of the inconvenience; but if a slave of one master marries the slave of another without his consent, the offspring belong to him. If such a marriage were to take place with his consent, there would be a stipulation as to the division of the offspring.

Slaves are in general well treated; a respectable master will treat his domestic slave as a child. Less kindness is felt for the slave who does not live in his master's house; but he is treated in the same way as a hired labourer.

There is more satisfaction in having domestic service performed by slaves than by hired servants, because they are more trustworthy; but I think the expense is about the same.

The same may be said of out-door slaves.

The slave has a right to maintenance from his master in age and sickness, and the courts would enforce the right.

According to the Shaster, the master would be punished for ill-using his slave; but the slave would not be liberated.

Now, however, I believe the courts would liberate the slave.

In Mymensingh and Rungpore masters let their slaves to hire, particularly females; but not in Rajshahi. The hiring is generally for short periods, two to six months.

There are two modes in which slaves are mortgaged; one when the mortgagee has possession of the slave, whose services discharge the interest; the other when the possession remains with the mortgagor and the security of the credit, or depends upon the deed only.

Slaves are transferred by an absolute bill of sale.

I know no instance in which slaves have been sold in execution of a decree, or for arrears of rent or revenue.

There is no redemption in the case of self-sale or sale by a parent.

As far as I have observed, it is not usual to separate husband and wife or young children from their parents; but the master has certainly a right to sell his slave to whom he pleases without his consent; but the ruling power ought to restrain him in any oppressive exercise of that right.

No. V.
Powers of a Master over his Slave.

22d of January 1839.

Henry Ricketts, Esq. Commissioner of Revenue and Circuit, Nineteenth Division.

I HAVE been employed in the district of Cuttack, in the political, judicial, revenue and salt departments, since the year 1827.

Slavery prevails in all parts of Cuttack, but more particularly in the chukla of Budruk, in the northern division, and in the chukla of Jehazpore, in the central division of the district.

Slaves are kept by all classes of persons, and are employed chiefly in out-door work.

The slaves are, principally, Pans, Kundras, Chasas, and Gowalahs.

The Pans and Kundras are impure castes, and cannot be employed in any service by which their masters might be polluted.

There are also Mahomedan slaves.

In 1829 or 1830, in consequence of the prevalence of dacoity in the chukla of Budruk, and the impression that the slaves were chiefly concerned in those atrocities, I took a census of the slave population of that portion of the district, and found it to amount, to the best of my recollection, to about 11,000; and in 1831 or 1832 I took a census of the whole population of Balasore, including the chukla of Budruk, and found it to be 500,000. The official returns of this census are deposited in the magistrates' office.

I do not know how slavery originated in Cuttack; but accessions are continually made by the self-sale of adults and the sale of children by their parents in times of distress.

I believe the Mussulman slaves bear a less proportion to the free Mahomedan population than the Hindoo slaves bear to the free Hindoo population.

A deed of sale is the form of document used in cases of self-sale and the sale of children, and these writings purport to convey the parties sold and their descendants in full property for ever. The civil courts so far recognise these sales as to admit the deeds in evidence, for the purpose of deciding on the titles of parties claiming the proprietary right in the slaves; but the slaves themselves are never parties to such suits. I recollect no suit instituted by a master against a slave, or *vice versâ*, founded on a deed of this description; and I cannot say, therefore, what the result would be; but I should not myself enforce such a deed, on the principle that slavery is not recognised by any of our regulations.

I was for seven or eight years magistrate of the northern division of Cuttack, and during that period several complaints were preferred to me by masters regarding the non-attendance of their slaves; but I never interfered to assist in coercing the latter, and I believe it to be the general practice of the magistrates in Cuttack not to recognise the right of the master to punish or coerce his slave. I know not how this practice originated; I never heard of any proclamation issued by Mr. Keir, when Commissioner of Cuttack, on the subject of slavery.

I am not aware what measures masters resort to for the purpose of enforcing the services of their slaves; my impression is, that one or two cases have occurred of slaves complaining against their masters for maltreatment, but I have no distinct recollection of them. Such complaints are exceedingly rare.

As a magistrate, I would not recognize the relation of master and slave as justifying any act on the part of the master which would otherwise be an offence, not even an act of slight correction or restraint of the slave.

I do not know whether slaves are ever manumitted by their masters; my impression is that slaves do occasionally purchase their liberty, but I cannot call to mind any particular instance.

The slaves do not enjoy the privilege of working during any portion of time for their own benefit; the masters have a right to their full labour.

I can give no information respecting the marriages of slaves.

The slaves are generally well treated, and their condition is equal to, if not better, than that of the free agricultural labourer, particularly in a famine.

It is the usage of the country for masters to support their slaves under all circumstances; but suits are never preferred by slaves on this account, and I imagine that such suits would not be entertained by the courts.

Slaves are usually maintained by a daily allowance of food, and periodical supplies of clothing; but some have lands given them to cultivate, the master receiving half the produce, or such portion of it as may be especially agreed on.

Free persons sometimes mortgage themselves for a time, either on account of debt or for an advance of money; but I do not know for what periods such contracts are usually made or the conditions of them, whether the services of the self-mortgagor go to the discharge of both principal and interest or of interest only.

I believe that transfers of slaves from one owner to another are frequent, but that they are never made without the slave's consent.

I understand also that slaves are mortgaged by their masters as security of the payment of a debt; but in such cases the slaves continue in the possession of their owners.

I am not aware whether masters let their slaves to hire.

I know of no slaves *adscripti glebæ*.

Children are frequently sold by their parents for the purpose of prostitution, sometimes by kidnappers; these are female slaves attached to the Temple of Juggernaut, but I do not know if to other temples also.

I am

No. V.
Powers of a Maste over his Slave.

I am not aware of slaves being sold by auction in satisfaction of decrees of court, or for realizing arrears of revenue or rent.

I know of no persons being imported into or exported from the district of Cuttack as slaves.

Kidnapping is certainly not common, but a case of kidnapping of a child occurred a short time ago at Cuttack; for what purpose the child was taken I know not.

I remember only to have tried one suit whilst officiating as judge of Cuttack, in which the ownership in slaves was disputed, and I do not recollect the particulars of it.

25th of January 1839.

Continuation of the Deposition of *Tek Loll*, Moktar of the Sudder Dewanny Adawlut, Calcutta.

MANUMISSION is rare, but sometimes it takes place when a master has a particular cause of satisfaction with a slave.

Upon occasion of funerals it is usual to give one or more slaves, amongst other presents, to the officiating Brahmin.

In general, slaves are contented with their lot. They can have no property as against their masters, but by his indulgence they frequently possess property.

Their marriages and funerals are attended with the same rites as those of free people of the same caste, and the master pays the expenses.

I have seven slaves.

One female slave accompanied my family from Behar to Calcutta two years and a half ago, and is now living with us. Two (one male and one female) I bought here. The other four are left in my family house in Behar; they consist of a lad, a man who is married to the slave of another master, an unmarried girl, and a widow, who has married a second time, in the form we call "Saggai."

I bought two of these slaves, viz. the girl I mentioned, and the lad, from their masters.

Two sold themselves to me, viz. the widow, and the man who is married to another man's slave. He was a freeman, though married to a slave.

Of the other three, I bought one girl of 11 years old from her maternal grandmother, another girl (very young) from her maternal uncle, and a boy of between four and five from his maternal uncle *. I know of no case in which the price of a slave is shared between the maternal relation and the owner.

The girl I bought from her grandmother has been married since we came to Calcutta. I married her to a slave who had left his master, and who followed me from Behar, and now lives in my family as a servant. He told me he was a slave, but never disclosed his master's name. I pay him wages. The marriage was performed at my expense.

I have only heard the prices of the slaves remaining in Behar from my brother.

The girl who was bought from her master cost 41 rupees.

The self-sold man, 26; of the other two I have forgotten the price.

Of those in Calcutta, the male who was bought from his maternal uncle in Calcutta cost seven rupees.

The girl who is married to the runaway slave cost 11 rupees; she was bought in Behar.

The unmarried girl was bought for five rupees in Calcutta.

All the seven are Behar people, of the Kuhar caste.

The maternal relations who sold the children to me had settled in Calcutta, and were in distress. I do not know if the children were born here or in Behar.

It is a moral duty incumbent on a master to provide for the marriage of his slaves.

If my male slave marries the female slave of another, the progeny all belongs to the owner of the woman.

The owner of the female to whom my slave in Behar is married has assigned a house, to which my slave goes at night, after his work is over. They have children, who all belong to her master.

It is uncommon for slaves of different masters to intermarry.

It is not uncommon for a free Kuhar to marry a slave. Even if he were to marry a free woman, the children would be under her dominion, and not under his, according to the rules of the Kuhar caste, therefore he has less reluctance to marry a slave.

If a free girl marry a slave, which often happens, the children are free, as they follow her condition.

These customs belong to the Kurmi as well as the Kuhar caste.

Slaves are in general well treated. If they live in a separate house they have rations; if in the house of their master, they have their portion of the food which is dressed for the family. They all receive clothing; usually two suits in the year.

The

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* The question, to which this is an answer, was asked in consequence of our having observed a statement in the following words in the collection of papers, entitled, "Slavery in India," p. 5:—"It seems, that on the sale of a slave who separately procures his own subsistence, only one-half of the price is received by the owner, the other half going to the parents of the slave."

No. V.
Powers of a Master over his Slave.

The quantity of food is not fixed, but proportioned to the appetite of the slave, when he lives in the house; but when he lives separate, and chooses to dress his own food, he receives a fixed allowance. An adult male would receive three seers of rice in the husk, or two seers of wheat unground, and, in addition, three-quarters of suttoo, which is the meal made from inferior grain or pulse. This is more than he can consume, and he barters the surplus for salt and other condiments. He has no allowance of fuel, but must find it for himself.

He sometimes can get a little tobacco out of the surplus, but it is not enough to purchase pawn and betel.

It is considered that the slave has a right to support in sickness and age. I never knew it refused.

Extreme ill usage would not confer a right to emancipation, but the magistrate would punish the master in that case.

If the master had no occasion for any service from the able-bodied slave, he would tell him to go and earn his own livelihood, but without relinquishing his legal rights.

I do not know of any case of a slave being let to hire; but mortgages of slaves occur, in two forms, that is to say, when the slave remains in the possession of the mortgager, and when he is transferred to the mortgagee. In the latter case, the mortgagee supports the slave, and has the benefit of his labour, which however does not, without special agreement, go to discharge the interest.

The children born during the mortgage belong, in either case, to the mortgager.

I remember a case which occurred in Behar three or four years ago. A Suniasi claimed a man named Beetut, and several others, as his hereditary slaves. The case was decided in the plaintiff's favour by the sudder amin, and the decision was confirmed by the zillah court.

I have lived eight years in Calcutta. Before that time I lived for 22 years in the city of Patna, going occasionally to my family house.

Slaves are usually transferred by a bill of sale called "puttras." There are two ways in which the sale of slaves (whether self-sale or sale by a master) takes place. One is when the price is settled between the parties; in the other the price is settled by a committee of arbitrators, who fix the price after a personal examination of the slave. If the slave about to be sold is a pregnant woman, and the future offspring is sold with her, the price is greater than it would be if the woman were sold alone.

A Kuhar could not be required to perform the work of a sweeper, but sometimes he will do such work if his master is ill.

There are some slaves who live, with their master's consent, on the lands of other persons, and perform no service for their masters, except attending at festivals, when they receive food.

It is more economical to have labour performed by slaves than by freemen; slaves show more zeal in the service of their masters.

The females belonging to Hindoo families in poor circumstances have no objection to hire themselves as servants.

It is common to commit the custody of valuable things in the house to slaves, but not to employ them in zemindary offices.

The sale of children is very frequent in times of scarcity.

Their relations who sold them have no right of redemption.

When a man agrees to serve for food, he can hardly be called a slave. His children are not affected by the contract.

When a Mahomedan buys a Hindoo slave, he does not usually make a convert of him.

Self-mortgage sometimes occurs, and is subject to the same rules as the mortgages of which I have spoken.

This kind of contract does not affect the children.

I never heard of a byakara.

The transfer of slaves is very common; but people of consideration think it derogatory to sell their slaves, and when in reduced circumstances prefer to let their slaves go and earn their own livelihood.

It is lawful, and not disreputable, for a master to sell his slaves to purchasers living at a distance, and to separate families; but such cases are rare.

It is usual for the master, after he has fixed the price of his slave, to allow him to select any purchaser who is willing to give that price.

There are no *adscripti glebæ* in Behar.

Slaves have frequently been sold in execution of decrees by order of the courts in Behar, Patna and Shahabad, but I cannot tell whether this is still done.

They are not, I believe, sold for arrears of rent or revenue.

Procuresses do obtain female children for purposes of prostitution.

There are no dancing girls attached to the temples in Behar.

Slaves are divided among the family, like any other part of the inheritance.

No. V.
Powers of a Master over his Slave.

The 29th of January 1839.

Rum Crishna Putnaik, Mohant or Oriah Kait.

I AM a native of village Bir Mukkunda Pow, purgunnah Sarai, near Pooree, in the southern division of Cuttack.

I am mooktear by occupation.

I have lived all my life in Cuttack, and have only been two months in Calcutta.

I am the owner of six villages. I have no slaves of my own; my lands are cultivated by free people.

There are slaves in Central and South Cuttack. They are the children or descendants of men of high caste, except Brahmins and of Mussulmans by concubines of inferior classes.

Among the lower castes, self-sale and the sale of children, in time of scarcity, are also origins of slavery.

The pure castes are, Chasa, Gowalla, Khundait, Soodra (proper), Goorea (confectioner), Burai (carpenter), Loohar, Bus Bunnea (seller of spices), Napit.

The impure are:—Telle, Kyhut, Raree, Gola, Fautee, Rungree (dyer), Chumar, Gokha, Khundra, Baslee, Pan, Haree, Dom, Bagdee.

The Brahmins do not own domestic slaves, but they have slaves for out-door work.

The impure castes are employed exclusively in out-door work. The pure are employed in both out-door and in-door work.

Sales of slaves are not common.

Those slaves who are the spurious kindred of their masters are never sold. The others not very often.

The sale is invalid without the consent of the slave. This is the local usage of the country. I have heard of a proclamation of Mr. Keir, which prohibited the sale of slaves. The consent of the slave is necessary by the old local usage, independently of the proclamation.

The spurious offspring of a Mussulman by a woman of low caste would not be a slave. I do not know whether he would inherit.

I never heard of any class of slaves in Cuttack called Moolla Zada.

There are some classes so very impure, that it is necessary to wash after accidentally coming in contact with them. If one of these see a man of respectability coming towards him, he either gives way or gives warning, that the men of good caste may avoid the pollution.

If a slave of pure caste is disobedient, it is usual to correct him by slaps with the hand. But the course with a slave of impure caste is to complain to the darogah, who will admonish him. He may also be corrected by causing another impure man to beat him.

I never heard of an instance of emancipation; the slaves do not in general desire it.

It sometimes happens that a master, in decayed circumstances, will tell his slave to go and earn his own livelihood.

In this case it is not usual for the master to receive any of the slave's earnings, unless the slave should be his child.

The master does not by this proceeding relinquish his legal rights, though sometimes the slave becomes practically free; but this does not frequently happen.

I never heard of a slave being let to hire.

No time is allowed to the slave to work on his own account.

Slaves are married with the same rites as free people of the same caste, and their funerals are performed in the same way.

Sometimes a master will marry two of his slaves to each other. Sometimes he will purchase a husband or wife for his slave; and sometimes he will marry them to the slave of other masters.

Free people do not intermarry with slaves, except those people who, though not belonging to any owner, have the taint of slavery in their blood. These people marry slaves without loss of consideration.

When I speak of buying a husband or wife, I do not mean buying them from another master, for it is not usual for masters to sell their slaves; I mean the purchase of a man from himself, or of a girl from her parents.

The maxim which regulates the local usage is, that the seed is more worthy than the soil in the distribution of the offspring, and therefore if a freeman marries my slave girl with or without my consent, the offspring is his. It is not usual, upon the marriages of slaves, to make any special agreement respecting the ownership of the offspring.

If I consent to the marriage of my female slave with a freeman, or with the slave of another master, she ceases to be my slave. In the first case she becomes free; in the last she becomes the slave of the husband's master.

The condition of slaves is harder than that of free labourers. Their work is harder, their fare and clothing is worse, and they are sometimes beaten.

When I said the slaves do not desire emancipation, I mean that they look upon it as unattainable, and therefore do not think about it.

The slave is entitled to maintenance from his master in age and infirmity; and I think that Mr. Wilkinson, formerly collector and magistrate of Cuttack, enforced this right in a case which was brought before him.

It is not usual to exact the lowest offices from slaves of pure caste; but if the master insist, the slave must obey. The slaves of impure castes perform the lowest offices.

No. V.
Powers of a Master over his Slave.

The labour of slaves is more economical than that of free labourers.

If I could obtain slaves, I should cultivate my villages by means of them, but they are not to be had; and I should also employ them for domestic purposes.

There is no redemption in the case of self-sale or sale by parents.

The proportion of slaves (meaning, by that term, all who have the stigma of slavery) to freemen, is as six to 10. One part out of the six is an actual slavery; the other five practically free. I am speaking only of Southern Cuttack.

Southern Cuttack is more thickly peopled and more cultivated than the other divisions.

The people are more industrious; this has always been the case.

The purchase of children by procuresses for prostitution takes place. The children are sometimes kidnapped, and sometimes bought from their masters.

I remember that Mr. Wilkinson punished a man with eight months' imprisonment for selling a child he had kidnapped.

Slaves are never sold in execution of decrees, or for arrears of rent or revenue.

There are 50 or 60 families of slaves belonging to the Temple of Juggernaut. The males of these families are not married to the females, but live with them in a state of concubinage. The numbers of this College of Devadasis, of slaves of the god, is kept up by their own progeny, and no additions to their numbers from without is permitted.

There is another temple in Cuttack, that of Rogonat, which has a similar establishment.

Consultations. 8 April 1839. No. 16.

From *T. H. Maddock*, Esq., Officiating Secretary to the Government of India with the Governor-general, to *F. Millett*, Esq., Officiating Secretary to the Government of India.

Legislative.

Sir,

I AM directed by the Right hon. the Governor-general of India, to acknowledge the receipt of Mr. Officiating Secretary Grant's letter, No. 81, dated the 11th ult., forwarding a copy of despatch, No. 4, of 1839, relative to slavery in India, addressed to the Honourable the Court of Directors; and to request that you will, with the permission of the Honourable the President in Council, furnish a copy of the Report from the Indian Law Commissioners alluded to in that despatch, for the Governor-general's perusal.

I have, &c.
(signed) *T. H. Maddock*,
Officiating Secretary to the Government of India with the Governor-general.

Camp Shahabad,
7 March 1839.

Consultations. 8 April 1839. No. 17.

MINUTES by the Hon. *A. Amos* and *T. C. Robertson*, Esqrs., dated 1st & 3d April 1839.

THE first question which I propose to consider, is the legal effect of the Slavery Act.

It seems to be clear, that by the existing law of the country, moderate correction of a slave by his master is permitted, and that immoderate correction is not permitted, and that the boundary between the two kinds of correction is not, and perhaps cannot be very distinctly defined. The effect of the proposed law is to abolish the right of moderately correcting a slave. If a charge of an assault not amounting even to touching the person, still more, if a charge of beating, however slight, be preferred by a slave against his master, the master will not in future be permitted to justify himself, by a plea of moderate correction, however gross the misconduct, however wilful the disobedience, however reckless the negligence of his slave may have been.

Our directions are, "that no act falling under the definition of an offence shall be exempted from punishment because it is committed by a master against a slave." Now it is to be observed, that several "acts falling under the definition of offences", as assaults and batteries, are exempted from punishment, because they are committed by a master against his servant; though the law in this respect would appear to be different in different presidencies, and, singular as it may seem, it is doubtful in English criminal law. Servants are under contract, the performance of which several of the Regulations, and especially the Bye-laws of Calcutta, will compel by severe punishment. The proposed Act leaves the master of the slave without means, either by his own personal correction, or through the intervention of a magistrate, of compelling the service of his slave.

It

No. V.
Powers of a Master over his Slave.

It may, perhaps, be said that the Act may bear another construction, viz., That a master shall not be allowed to justify an assault merely by proving that the person assaulted is his slave, but that he must go on further, and prove that the slave has been guilty of misconduct, disobedience or negligence; that a master shall not be allowed to justify an assault on his slave, unless he shows that the assault under the circumstances "does not fall under the definition of an offence". In answer it is to be observed, that if the Act only effects this, it effects nothing which is not already the established and universally known law of the country. I do not find a single opinion anywhere advanced, that by any law prevalent in India, a master has a right to give even moderate correction to his slave unless his slave has been guilty of some fault.

I think it would not be expedient, as it has been suggested, to add a proviso to the Act, that the slave may be punished under the same circumstances and in the same manner as a menial servant, for this would materially modify what I think is the obvious construction of our directions, and it might subject the slave to the Regulations respecting servants, or at least would lead us into a declaration of the power of masters over servants, for which we are not quite prepared.

It has been thought by Mr. Cameron that the Act would operate as a declaration against the assumed right of a master to prostitute his female slaves. I have added some words to the draft of the Commissioners in order to make this intent more apparent; but I think that, without making the alleged practice a substantive offence, the Act can reach it only in a very indirect and ineffectual manner. I scarcely think that it would be expedient to go so far beyond our directions as to legislate directly and expressly with reference to this infamous practice.

II. Having considered the legal effect of the Act, I propose next to consider its practical operation.

I believe, as far as an opinion can be formed upon the present state of our information, it will have no practical operation of any importance in ameliorating the condition of slavery. Already both law and practice are opposed to immoderate correction by a master of his slave; and I conceive that the practice of the magistrates and the courts would decide doubtful cases in favour of the slave. As to cases of moderate correction for misconduct, disobedience or negligence, I think that there is a variety of grounds for believing that they will rarely be brought before a magistrate except perhaps from malicious motives. If so brought, there will be great difficulty in establishing them. If established, the magistrate would seldom be justified, especially in cases of gross misbehaviour on the part of the slave, in inflicting a punishment on the master which would have any other effect than bringing the law into contempt.

III. Lastly, with reference to the question of the expediency of the proposed Act.

There is that conflict between law and the practice of magistrates, and that discrepancy in the practice itself, as to make it somewhat doubtful whether in any and what cases moderate correction may be exercised by a master over his slave without danger of legal punishment, and in a perfect code; such a point as this ought not to be left in doubt.

Still if the removal of such doubts will not be attended with any practical consequences of importance for the amelioration of slavery, it appears to me expedient to pass such an Act as an isolated measure at any time, and especially under the existing circumstances of India. The objections against an isolated measure of this character at all times, and especially at the present moment, might even be set up against some small degree, at least, of practical benefit arising to slaves in India, differing as their condition does, in essential particulars, from those forms of slavery which have been principally the subject of attention and reprobation in England.

Neither, I think, ought we to lose sight of the consideration, whether in taking away (by a side wind as it were, and through the medium of the criminal law) from the master the only legal means in his power of compelling his slave to work, we ought not, in justice, to grant him compensation. I cannot help dissenting from my friend Mr. Cameron's opinion (for it is by no means that of the Commission), that any work which the slave might possibly perform, but which he would not perform unless he were compelled by moderate correction, is totally valueless; and that the power of moderate correction will not have the slightest effect

No. V.
Powers of a Master over his Slave.

in increasing the diligence, obedience or respect of the slave; although the benefits to which the slave may look forward, in the event of age, sickness or famine, as the implied, though not the legal condition of his service, may protect such opinion from any imputation of being a paradox. But, although such an opinion may be well founded, is a different view of the subject so unreasonable, as that we must not expect that it will be generally entertained by the masters of slaves, and will create in the country a general opinion against the justice of our proceedings? It may be observed, moreover, that if coercion will not produce valuable labour, coercion will not be generally practised, and that therefore there is less occasion for a new law.

But what appears to me the strongest reason against passing the Act at the present moment is, that the investigations which have already taken place before the Law Commission, show what a very imperfect knowledge of the subject of slavery in India was in the possession of those individuals who were the authors of the recommendation, which we are now directed to transfer into an Act. Our knowledge on the subject is still very imperfect, especially as regards the Presidency of Madras. Upon the important considerations of what will be the precise and the whole practical operation of the Act, and what feelings it will occasion among the native community, I do not think that we have the materials before us necessary for forming the most correct judgment.

IV. It will be for others more conversant with official forms and usage to say whether the Court of Directors have intended on the present occasion to leave any discretion in our hands. At all events, the directions which we have received, indicate a very strong opinion upon the subject with the home authorities. It, therefore, will probably not be thought advisable to delay the execution of the directions we have received, unless the Governor-general and Members of Council, and perhaps also the government of Madras and Bombay, are unanimously of opinion that the publication of the Act ought to be postponed.

Calcutta, 1 April 1839. (signed) *A. Amos.*

But for the peremptory tone of the order conveyed to us by the Honourable Court's letter of the 26th September last, I should have no hesitation in recording my concurrence in what Mr. Amos has stated with so much clearness and force against the immediate passing of the proposed Act. Looking, however, to that letter, I fear that no discretion is allowed us, and that the Act, objectionable as I regard it in many respects, and calculated in indiscreet hands to work incalculable mischief, must be promulgated.

3 April 1839. (signed) *T. C. Robertson.*

Consultations. 8 April 1839. No. 18. On the Slavery Act.

MINUTE by the Honourable *W. W. Bird*, Esq., dated 5 April 1839.

THE orders of the Court merely are, that we should lose no time in passing an enactment to the effect stated in Note (B.), which is appended by the Law Commissioners to the Penal Code, namely, "That no act falling under the definition of an offence should be exempted from punishment because it is committed by a master against a slave."

But it appears that the draft Act submitted for this purpose by the Law Commissioners, with their Report of the 1st of February last, goes much further, and will have the effect of depriving the master, with respect to his slave, of that power of moderate correction which he can legally inflict, with sufficient cause, on all the rest of his family.

This I do not think could have been intended, and is manifestly objectionable, inasmuch as it raises the condition of the slave above that of others who are not slaves in the same domicile, renders him entirely independent of his master by whom he is fed and clothed, and assures him of impunity, however gross his negligence, wilful his disobedience, or inexcusable his misconduct.

Such a law we are not required by the Court's instructions to pass, a law which is declared by Mr. Robertson to be calculated, in injudicious hands, to work incalculable mischief. If an Act, such as I conclude the Court contemplated, cannot be framed without releasing the slave from that control necessary for the preservation

No. V.
Powers of a Master over his Slave.

preservation of good order and sobriety of conduct, it would be advisable, I think, to abstain from legislation at present, and refer the question for the further consideration of the home authorities.

(signed) *W. W. Bird.*

Fort William, Legislative Department, 8 April 1839.

Consultations. 8 April 1839. No. 19.

DRAFT of Act submitted by the Law Commission, with certain Amendments made by the Council of India,

IT is hereby declared and enacted, that whoever assaults, imprisons, or inflicts any bodily injury upon any person being a slave, either by way of punishment or of compulsion, or in the prosecution of any purpose, or for any other cause, or under any other pretext whatsoever, under circumstances which would not have justified such assaulting, imprisoning, or inflicting bodily injury upon such person if such person had not been a slave, is liable to be punished by all courts of criminal judicature within the territories subject to the government of the East India Company, as he would be liable to be punished by such courts if such person had not been a slave.

(signed) *J. P. Grant,*
Officiating Secretary to the Government of India.

(No. 183.)

From *J. P. Grant*, Esq., Officiating Secretary to the Government of India, to *T. H. Maddock*, Esq., Officiating Secretary to the Government of India with the Governor-general.

Consultations. 8 April 1839. No. 20.

Sir,

Legislative Department.

I AM directed by the Honourable the President in Council to acknowledge the receipt of Mr. Torrens's letter of the 18th of December last, enclosing a despatch from the Honourable Court, dated the 26th September 1838 (Legislative Department, No. 15), and to forward to you, for the information of the Right honourable the Governor-general of India, copies of the papers noted on the margin.

To Secretary to the Indian Law Commissioners, dated 7 January 1839.
Minute by the Hon. A. Amos, Esq., dated 4 Feb. 1839, with its Enclosure.
Letter from the Law Commissioners, dated 1 Feb. 1839, with its Enclosures.
Minute by the Hon. Mr. Amos, dated 1 April 1839, and Mr. Robertson, dated 3 April 1839.
Minute by the Hon. Mr. Bird, dated 5 April 1839.
Draft of Act, dated 8 April 1839.

2. On the receipt of Mr. Torrens' letter, the Law Commissioners were requested to report whether the law, as now actually in force over every part of British India, is or is not such as to make the passing of a law of the nature directed by the Honourable Court requisite, in order that the intention of the home Government may be carried into complete effect. To this question the Law Commissioners answered in the affirmative; and as directed to do in case they should so answer, they submitted the draft of an Act of the nature directed by the Honourable Court. In doing so, they observed that "an express enactment or declaration of the Legislature seems highly desirable," to determine the existence or non-existence in a master of the right of moderately chastising his slave for a fault. But observing that the question of which determination is the more expedient had not been submitted to them, and that some of them did not feel prepared to express, at this stage of the inquiry into slavery, any opinion upon that point, they contented themselves (with the exception of Mr. Cameron, who sent up a separate minute upon this point) with giving a simple reply to the legal question put to them, and the grounds of their opinion thereon.

3. On taking the draft thus submitted into consideration, it was determined to add a few words for the purpose of making its whole intent more apparent, as explained in Mr. Amos's minute of the 1st April 1839, with which addition it is proposed to read it for the first time if it be determined immediately to pass any Act to the effect of this draft Act.

4. But the question whether any such law should now be promulgated, or whether nothing should be done in the matter of slavery in India before an

No. V.

Powers of a Master over his Slave.

answer may be received to a reference to be made to the Honourable Court upon the subject, has been the subject of anxious deliberation with the President in Council. On this point I am directed to request that the Right honourable the Governor-general may be referred to the minutes recorded by Mr. Amos, Mr. Robertson and Mr. Bird, dated respectively the 1st, the 3d, and the 5th of April.

5. Upon this question the President in Council begs to be favoured with the opinion of the Governor-general.

6. I am directed to suggest, for the consideration of his Lordship, that perhaps it may be practicable for his Lordship to report to the Honourable Court, in time for the next overland mail from Bombay, the result of this reference to him. The Report of the Law Commissioners, dated the 1st of February last, with its accompaniments, including an Appendix of Evidence taken by them on the subject of slavery in India, has already been submitted to the Honourable Court by the overland mail of February, with a despatch from the President in Council, dated the 11th of February last, a copy of which was forwarded to you with my letter of the same date. The minutes above referred to, the amended draft, this letter, and his Lordship's reply, will remain to be submitted to the Honourable Court.

7. Amongst the papers sent herewith is the copy of the Report of the Indian Law Commissioners required by your letter of the 7th ultimo.

I have, &c.
(signed) *J. P. Grant*,
Officiating Secretary to the Government of India.

Fort William, 8 April 1839.

Consultations. 27 May 1839. No. 2.

From *T. H. Maddock*, Esq., Officiating Secretary to the Government of India with the Governor-General, to *J. P. Grant*, Esq., Officiating Secretary to the Government of India, Fort William.

Sir,

Legislative.

I AM directed by the Right honourable the Governor-general to acknowledge the receipt of your letter, No. 183, dated the 8th ultimo, with its enclosures, on the subject of the Slavery Act, and in reply to transmit for submission to the Honourable the President in Council, a copy of his Lordship's minute this day recorded, containing his sentiments on the subject; and with reference to the 14th paragraph of that minute, to suggest that his Honour in Council will call for a note on the state of the law and practice of the traffic in children.

2. A copy of his Lordship's minute, as also copies of your letter under acknowledgment, and of the papers alluded to in the 6th paragraph of it, have been forwarded to the Honourable Court by the steamer which will sail from Bombay on the 20th instant, in a despatch in this department, No. 1 of 1839, a copy of which is enclosed for the information of the Honourable the President in Council.

I have, &c.
(signed) *T. H. Maddock*,
Officiating Secretary to the Government of India with the Governor-general.

Simla, 6 May 1839.

Consultations. 27 May 1839. No. 3. Enclosure.

Proposed Act affecting Slaves.

MINUTE by the Right honourable the Governor-general.

1. THE Honourable Court have by their despatch of the 26th of September 1838, explicitly desired that the Governor-general of India in Council should lose no time in passing an enactment, to the effect "that no act falling under the definition of an offence should be exempted from punishment, because it is committed by a master against a slave."

2. At my suggestion the Law Commissioners were called upon to report whether the intention of the Home Government was not already carried into complete effect by the practice of our criminal courts: the answer of the Commissioners was unfavourable to this view of the case, and the draft of an Act to the effect proposed has been accordingly submitted; but doubts upon other grounds have been thrown upon the policy of passing any such law. Minutes on the subject of high

high authority have been recorded, and in the end the President in Council has requested my opinion.

3. It is observed by the Law Commission, that "the law in some parts of British India" is already in conformity with the intentions of the home Government; in other parts it is not, and in other parts it is in such a state that no one "can say with certainty whether it is or is not in conformity with these intentions."

4. In truth, the law in this respect partly depends upon the opinions of those by whom it is administered, and is liable in some degree to fluctuate with a change of functionaries. About half of the judicial functionaries of the lower provinces have given an opinion that they should make no difference between the treatment of a slave and a freeman. In the upper provinces the Nizamut Adawlut have affirmed without dissent that no distinction is recognised between the slave and the freeman in criminal matters; and in Madras and Bombay there is the same uncertainty, and the law cannot be said to be altogether in conformity with the intentions of the Honourable Court. It is cited as an instance of the uncertainty and inconsistency of the law, that the right of moderate correction in the matter is recognised by the magistrate in Southern Cuttack, whilst in Central Cuttack the judgment upon every complaint by a slave, whether substantiated or not, has been, "We do not recognise slavery, you may go where you please, and if your master lays violent hands upon you, we will punish him."

5. Even in Malabar, where the caste of Churmurs, or rustic slaves, have been said to live in the lowest stage of servility and degradation, it was stated by the magistrate, as far back as 1835, that "slaves complaining against their masters for acts of violence, receive equal protection with all other castes; they now readily resort to the magistrates' cutcherry, where prompt attention is given to their complaints, and the parties offending against them are immediately punished, without any reference to their relative situations." I am aware that an entirely similar doctrine has not been held even in the neighbouring district of Canara; but it is altogether clear that the abuse of violent punishment is not anywhere legal. Even the authorities which allow any right of correction do not place it higher than that which a parent has over a child, or a master over a scholar or apprentice; and the Hindoo law equalizes the rights which a man has in this respect over his wife, his son, his slave, and his younger brother of whole degree.

6. With all this, however, and with whatever degree of equality and humanity in practice, the law as it stands is uncertain; and the remedy indicated by the Law Commissioners is an enactment, either declaring that the legal right of moderate correction does, or that it does not exist in the master; and as the question has not been submitted to them, the Commissioners collectively decline to discuss which of those two doctrines it would be most expedient to promulgate, and they accordingly, in obedience to the directions issued to them, submit the draft of an Act for consideration, by which the right of moderate correction is denied.

7. I do not approve of the law in the form proposed; I think that it attempts to define and to restrict too closely, and I should prefer the more general form of Act as originally proposed by the former Law Commissioners in their Note (B.) on the draft of Penal Code, and as approved by the Honourable Court in their despatch now before us.

8. If the matter, however, were wholly left to my discretion, I should very much prefer not to legislate at all for the purpose of regulating the conduct of masters towards their slaves. All such regulation implies a recognition of a state of slavery, towards the absolute extinction of which I am satisfied that by the mere force of time, of civilization, and of the lenient and well-understood principles and practice of British administration, great advances are in progress. If we in this manner formally recognise the state of slavery, we shall incur a great danger of directly defeating our own intentions, and of becoming parties to the maintenance of that state by being led into different measures for the regulation of the rights and obligations incident to it. In the case with which we have now to deal, it would seem impossible not to accompany the enactment of such a law as is proposed, with provisions giving to masters some easy legal means of obtaining the due services of their slaves. A summary jurisdiction is already given to magistrates in the Bengal Presidency (by Regulation VII. 1819),

No. V.
Powers of a Master over his Slave.

1819), for the enforcing the duties of the relation of masters and free servants and labourers; and the masters of slaves might justly require that some law similar in principle should be passed for the fair protection of their rights; measures of such a character would, however, I apprehend, be found highly inconvenient and embarrassing. At present the hold of masters over their slaves is generally of the most loose description, the leaning of our courts against the admission or support of a condition of bondage is notorious, and of powerful effect; there is no course of legal proceeding against an absconding slave except by a regular civil action, on the inefficacy of which the former Law Commissioners have justly and forcibly observed. The attachment and continued labour of the slave is secured only by habit, by fixed national usage and opinion, and by the sure means of good and moderate, and even indulgent and favourable treatment; these circumstances furnish, to my mind, arguments of exceeding strength against a legislation which must revive and, in some manner or other, confirm rights now rapidly losing all their force without any ostensible interference of the government.

9. I would not enter into a discussion upon the degree to which, in the present condition of Indian society, all slavery is excluded from amongst the Mahomedans by the strict letter of their own law, or upon the degree to which the Mahomedan law and usage have superseded the Hindoo law of slavery; but it is, I think, from the causes above explained, sufficiently clear, that the abhorrence to slavery entertained by the English functionary is gradually establishing an administration of the law under which all slavery must fall. We may be certain that, with the lapse of time, that abhorrence will only increase and be diffused, and that any inconsistencies now existing in legal practice must be before long removed by uniform interpretations in favour of the slave.

10. On the other hand, I admit the strong general arguments which may be urged against any permission of laws of uncertain construction and inconsistent administration, and I do not at present see reason to anticipate, as far as regards this presidency, serious dissatisfaction or other inconvenience from the adoption of the proposed remedy; and if in the opinion of others it were likely to be productive of good, and if the law were drawn and could be passed without injustice to masters, simply in the more general form mentioned by the Honourable Court, and so as not to bear the construction of at all sanctioning a state of slavery, I should be prepared, in deference to the Honourable Court, to give my assent to it. I must hesitate, however, upon doing so against the declared opinion of Mr. Amos, and with the expression before me of doubts upon the subject by Mr. Bird, accompanied by the statement by Mr. Robertson, that, in his opinion, the law in question would be objectionable, and calculated in indiscreet hands to work immeasurable mischief.

11. We have been directed by the Court to lose no time in passing a law to the effect proposed; but surely this direction is in its very terms compatible with a due discretion; and before the law could be passed, I think that we are justified in asking for the opinion of the Law Commission on its expediency, and bound in common prudence to consult the governments of Madras and Bombay upon the effects which it may have within those presidencies. I propose accordingly, that this course be now in the first instance taken, and in the meantime I shall forward copies of all the minutes by the steam mail, under despatch, for the further observations of the Honourable Court.

12. I have said that the inclination of my own mind is against legislation on the subject of slavery, for reformation is working its own way, and a direct interference may frustrate our own objects, while it may in some places, and from the absence of any very definite meaning in India to the term "slave*," excite alarm and counteraction; and yet there is one class of abuse as connected with this subject, to which the attention of the government and of the Law Commission may very properly, in my opinion, be directed.

13. The subservience of a dancing girl to her keeper is, perhaps, not greater in

* I have used this term not only in deference to the distinction which has been drawn by Mr. Cameron between slavery in the East and slavery in the West Indies, but because (as I understand) such terms as "Fidoee," "Gholam," "Rhanazad," and others, are very generally translated by the word "slave," though they may be often rather applicable to a state of honourable and connected dependance than to one of bondage.

No. V.
Powers of a Master over his Slave.

in India than that of the young prostitute to the panders of Paris and of London; and no magistrate in these days would construe it to be slavery, or in any way sanction the right of control which is assumed. Yet the power over these girls is acquired by purchase; and from correspondence with Major Sleeman and others, I am led to believe that the traffic in children for the supply of the zunana and the brothel, is a source of extensive crime, upon the temptation to which gangs, even of systematic murderers, as appears by the published Report upon the Megpunna Thugs, have been founded. All crime, indeed, by which the possession of the child is obtained, is already punishable by law; but it is not easily detected, and it seems probable that far too much of facility exists in the traffic which follows upon the possession.

14. I shall be very glad if the Law Commission, or if the Secretary of Government at Calcutta in the legislative department, were called upon for a note on the state of the law and practice on this subject. I am told that it was brought under discussion before the government a few years ago, soon after a great inundation in Cuttack, when from the inability of parents to support their families, the extensive sale of children had attracted general notice. The purchase of children at that time was very generally an act of charity, and was considered to be legal and commendable, but the legality of such a traffic in ordinary times must, in my opinion, lead to evils more than counterbalancing its occasional good.

(signed) *Auckland.*

Simla, 6 May 1839.

(No. 222.)

From *J. P. Grant*, Esq. Officiating Secretary to the Government of India, to the Indian Law Commissioners; dated 27 May 1839.

Gentlemen,

With reference to your Report on the present state of the criminal law in India relating to slaves, the Honourable the President in Council requests that you will collectively favour him with your opinions on the following points:

1. Whether or not it is expedient now to pass any law to the effect of that directed by the Honourable Court of Directors, in their despatch of the 26th September 1838, No. 15, whereof an extract accompanied my letter to your address of the 7th January last.

2. The Indian Law Commissioners were in the first instance desired to report whether the law, in its present state, did not provide all that was intended by the Court of Directors, who, in their despatch, desired the government of India to pass an Act to the effect of a provision suggested in Note (B.) of the Penal Code, viz. "Whatever is an offence when committed against a freeman, shall also be an offence when committed against a slave." In answer to the question put to them, the Law Commissioners have reported that the law in its present state does not provide for every thing which the terms cited from the Penal Code would include. The grounds of their opinion will be seen from the accompanying copy of their Report, dated the 1st February last. It would appear that the Commissioners considered that the present criminal law of the country made one difference between slaves and freemen, but no other, viz. that a master might

(Nos. 341, 342.)

From *J. P. Grant*, Esq. Officiating Secretary to the Government of India, to the Chief Secretary to the Government of Fort St. George, and Secretary to the Government of Bombay; dated 27 May 1839.

Consultations. 27 May 1839. No. 4.

Sir,

In consequence of the receipt of a despatch from the Honourable the Court of Directors, on the subject of slavery in India, the Honourable the President in Council has had under his consideration a proposed law (a copy of which accompanies this letter), declaring and enacting that any assault committed, or personal injury inflicted on a slave shall be punishable in the same manner as if such assault had been committed, or personal injury inflicted on a free person.

(signed) *J. P. Grant,*
Officiating Secy to Govt of India.

No. V.
Powers of a Master over his Slave.

might justify inflicting moderate correction on a slave for certain faults.

3. The Right honourable the Governor in Council is requested to favour the government of India with his opinion on the following points:

4. First. Whether or not it is expedient now to pass any special law to the above effect.

5. The President in Council remarks on this point, that, as will appear from the perusal of Note (B.) of the Penal Code, much variance in the practice of magistrates exists as to recognising the right of moderate correction by a master of his slave. It is desirable that doubts upon this subject should be removed, if it can be done without the hazard of creating greater inconveniences.

Upon the expediency of formally abolishing the power of a master to correct his slave in any case, it may be desirable to consider whether it would be regarded with justice, or, in fact, by any considerable portion of the community, as an infringement of rights and a deterioration of property through the medium of the criminal law. It is also to be considered, as the regulations for the punishment of servants do not appear to be applicable to slaves, whether, regarding such benefits as the slave may derive from his situation, it is proper that he should be placed in a much more independent condition than a servant, and be exempted from punishment of every kind, from whatever authority, and on whatever occasion.

6. It may deserve inquiry whether an objection applies to any special law regulating the conduct of masters towards their slaves (especially if it be thought proper that the law should contain provisions for enforcing by a magistrate the obedience of slaves in like manner as servants), as implying a recognition of a state of slavery, towards the absolute extinction of which, by the mere force of time, of civilization, and of the lenient and well-understood principles and practice of British administration, great advances are in progress. It has been observed, that if government in this manner formally recognise the state of slavery, it will incur a great danger of directly defeating its own intentions, and of becoming parties to the maintenance of that state, by being led into different measures for the regulation of the rights and obligations incident to it. It appears to be very important to compare, on the one hand, the inconveniences to which it may be thought the law will give rise, not merely such as may necessarily result from it, but also such as it may be likely to produce if administered indiscreetly, or if made a plausible ground for discontent and excitement, and, on the other, the practical benefits which the law may be expected to confer. As to this, it is to be observed that the real operation of the law is much more limited than would at first sight appear, from the terms of the provision suggested in Note (B.) of the Penal Code, which provision, it must be recollected, was intended by the Law Commissioners to be applied to the whole criminal law, and not merely to supply a particular defect in the existing law; it was made to prohibit immoderate as well as moderate correction, the former of which is already provided against by the existing law. It may deserve consideration whether the operation of the law, in simply prohibiting moderate correction, will not, in fact, be still more limited by the general practice of magistrates upon complaints of the nature in question, which is at present to lean in favour of the slave. And regarding the effects of usage, the distance of tribunals, the difficulty of establishing a charge of moderate correction, the trifling nature of the punishment which could with justice be inflicted on a master for moderately correcting his slave, (it being understood that, according to the existing law, the master would be punishable if he corrected his slave immoderately, or even moderately, except for negligence, disobedience, or disrespect,) it may be proper to inquire whether the Act would be likely to have any practical effect of a general or extensive nature.

7. Without entering into a discussion upon the degree to which, in the

No. V.
Powers of a Master over his Slave.

the present condition of Indian society, all slavery is excluded from amongst the Mahomedans by the strict letter of their own law, or upon the degree to which the Mahomedan law and usage have superseded the Hindoo law of slavery, it must be sufficiently clear that the abhorrence of slavery entertained by the English functionary is gradually establishing an administration of the law under which all slavery must fall. It may be certain that, with the lapse of time, that abhorrence will only increase and be diffused, and that any inconsistencies now existing in legal practice must be before long removed by uniform interpretations in favour of the slave.

8. Second. Whether, supposing a law of the nature proposed to be determined on, it could with justice be passed without compensation to the owners of slaves; and, generally speaking, what compensation would be equivalent to the practical change which such a law would effect in the value of a slave. Also, whether it would be indispensable that, if the power of moderate correction be taken away, some provisions for enforcing obedience in the nature of the regulations or bye-laws for enforcing the obedience of servants should be enacted.

9. Third. Supposing a law of the nature proposed to be passed, whether it would be expedient to pass it somewhat in the form of the appended draft, Act (A.), which has been slightly altered from the draft prepared by the Law Commissioners, or in a more general form, as in the appended draft, Act (B.), which follows more nearly the words of the Honourable Court's despatch. It has been objected to the draft (A.), that it attempts to define and to restrict too closely. On the other hand, as will be seen from the Report of the Law Commissioners, the only legal effect of the law would be to take away the right of moderate chastisement for misconduct, such as may be exercised by a parent over his child, or a master over his apprentice. It may therefore deserve consideration whether the Act, in the more general form, would import a great deal more than its real operation; and though its terms might be very proper in a code which embraced the whole criminal law, they would be inappropriate in an Act which contained only a very partial modification of the existing law. It might be observed that the use of such general terms would have the effect of representing the existing law as much more defective than it really is, and of introducing much greater changes in the usages and rights of the native community than is either intended or effected.

I have, &c.

Fort William,
27 May 1839.

(signed) *J. P. Grant,*
Officiating Secretary to Government of India.

DRAFT ACT (A).

IT is hereby declared and enacted, that whoever assaults, imprisons, or inflicts any bodily injury upon any person being a slave, either by way of punishment or of compulsion, or in the prosecution of any purpose, or for any other cause, or under any other pretext whatsoever, under circumstances which would not have justified such assaulting, imprisoning, or inflicting bodily injury upon such person if such person had not been a slave, is liable to be punished by all courts of criminal judicature within the territories subject to the government of the East India Company as he would be liable to be punished by such courts if such person had not been a slave.

(signed) *J. P. Grant,*
Officiating Secretary to the Government of India.

No. V.
Powers of a Master over his Slave.

DRAFT ACT (B).

IT is hereby declared and enacted, that no act which would be an offence if done against a free person shall be exempted from punishment because it is done against a slave.

(signed) *J. P. Grant,*
Officiating Secretary to the Government of India.

(No. 223.)

Consultations. 27 May 1839. No. 5. Legislative Department.

From *J. P. Grant,* Esq., Officiating Secretary to the Government of India, to the Indian Law Commissioners.

Gentlemen,

As bearing upon the general question of slavery in India, to which my letter to your address of this date, No. 222, relates, I am directed by the Honourable the President in Council to request that you will prepare and submit for the consideration of government, a note of the present state of the law and practice in India relative to the sale of children.

2. It has been observed to the President in Council that the subservience of a dancing girl to her keeper is perhaps not greater in India than that of the young prostitute to the panders of Paris and of London; and no magistrate in these days would construe it to be slavery, or in any way sanction the right of control which is assumed. Yet the power over these girls is acquired by purchase; and it is suspected that the traffic in children for the supply of the zenana and the brothel is a source of extensive crime, upon the temptation to which gangs even of systematic murderers, as appears by the published Report upon the Megpunna Thugs, have been founded. All crimes, indeed, by which the possession of the child is obtained, are already punishable by law; but it has been observed that such crimes are not easily detected, and that it seems probable that far too much of facility exists in the traffic which follows upon the possession.

3. The opinion and suggestions of the Indian Law Commissioners are requested on this subject in a separate Report; as it appears to the President in Council to be a question which, supposing it to require legislation, might be conveniently legislated upon without reference to the question to which my separate letter of this date relates.

I have, &c.
(signed) *J. P. Grant,*
Officiating Secretary to the Government of India.

Council Chamber, 27 May 1839.

(No. 359.)

Consultations. 27 May 1839. No. 6. Legis. Department.

From *J. P. Grant,* Esq., Officiating Secretary to the Government of India, to *T. H. Maddock,* Esq., Officiating Secretary to the Government of India with the Governor-General.

To the Chief Secretary to the Government of Fort St. George, Secretary to the Government of Bombay, and Indian Law Commissioners, dated 27 May 1838.
To the Indian Law Commission, under the same date.

Sir,

WITH reference to your letter, dated the 6th instant, I am directed by the Honourable the President in Council to forward to you, for the information of the Right honourable the Governor-general, copies of the letters addressed on the subject of slavery in India, as noted in the margin.

I have, &c.
(signed) *J. P. Grant,*
Officiating Secretary to the Government of India.

Fort William, 27 May 1839.

No. V.
Powers of a Master over his Slave.

(No. 192.)

From *J. C. C. Sutherland*, Esq., Secretary to the Indian Law Commission, to *J. P. Grant*, Esq., Officiating Secretary to the Government of India, Legislative Department.

Consultations. 24 June 1839. No. 54.

Sir,

I AM directed by the Law Commissioners to acknowledge the receipt of your letters, dated 27th May, Nos. 222 & 223, and to request that you will inform his Honour in Council, that the subjects referred to the Law Commission in both these letters are now under their consideration, with a view to their general Report upon slavery in India.

2. As it will be shortly ready for presentation, the Law Commissioners submit that the most convenient and satisfactory made of accomplishing the wishes of his Honour in Council will be to proceed with that Report.

I have, &c.

Indian Law Commission, 13 June 1839.

(signed) *J. C. C. Sutherland*, Secretary.

(No. 627.)

From *H. Chamier*, Esq., Chief Secretary to the Government of Fort St. George, to *J. P. Grant*, Esq., Officiating Secretary to the Government of India.

Consultations. 2 Sept. 1839. No. 11.

Sir,

WITH reference to your letter of the 27th May last, No. 341, I am directed by the Right honourable the Governor in Council to transmit, for the information of the Honourable the President in Council the accompanying copy of a letter from the acting register of the Sudder Udalut, submitting the sentiments of that court on the several points referred to in your letter under reply on the subject of slavery in India, and to intimate that his Lordship in Council entirely concurs in the opinions expressed by the judges, and considers it will be preferable not to legislate at all in respect to slavery until the whole question in all its bearings has been fully considered.

Judicial Department. 17 July 1839. No. 130.

I have, &c.

Fort St. George, 30 July 1839.

(signed) *H. Chamier*, Chief Secretary.

(No. 130.)

From *T. H. Davidson*, Esq., Acting Register to the Sudder Udalut, Fort St. George, to the Chief Secretary to Government.

Consultations. 2 Sept. 1839. No. 12. Enclosure.

Sir,

1. I AM directed by the judges of the Sudder Udalut to acknowledge the receipt of the extract from the minutes of consultation, under date the 2d July 1839, No. 530, forwarding copies of a letter, dated the 27th May last, from the Officiating Secretary to the Government of India, and of the papers which accompanied that communication on the subject of slavery in India, with reference especially to a despatch from the Honourable the Court of Directors, desiring the government of India to pass an Act to the effect of a provision suggested in Note (B.) of the Penal Code, and requiring the Court of Sudder Udalut to submit their sentiments on the several points therein referred to.

Sudder Udalut.

2. The first question on which the sentiments of this court are required by government is, "Whether or not it is expedient now to pass any special law to the effect of that of which a copy is annexed, declaring and enacting that any assault committed or personal injury inflicted on a slave, shall be punishable in the same manner as if such assault had been committed or personal injury inflicted on a free person."

3. With reference to the observation in paragraph 5, of the letter from the Officiating Secretary to the Government of India, dated 27th May 1839, that much variance "in the practice of magistrates exists as to recognising the right of moderate correction by a master of his slave," the judges of the Sudder Udalut remark that the circular order of the Foujdaree Udalut of the 27th November 1820 has laid down a uniform course of procedure in this respect, and that inasmuch as

No. V.
Powers of a Master over his Slave.

no specific penalty is prescribed in the Regulations for assaults exceeding the jurisdiction of the magistrate (under Sect. 32, Regulation IX. of 1816), the criminal judge is required under the provisions of Sect. 7, Regulation X. of 1816, as illustrated by the circular order of the 28th January 1828, to be guided, in such cases, by the Mahomedan law, which does not make a master liable to punishment for correcting his slave in a lawful manner for an offence incurring discretionary punishment under that law.

4. "Regulations for the punishment of servants" for breach of duty, "or departure from proper demeanor," have been enacted in Sect. 18, Regulation XII. of 1827, in the case of Bombay; but there are no such provisions in force under this presidency, where therefore the comparison between the condition of a servant and that of a slave exempted from correction by his master cannot be made.

5. In the Note (B.) to the Penal Code, it appears to be argued, that the masters of slaves, in these territories, exact service by the use of violence, and that the same of reciprocal benefit is not brought into operation under the system of slavery there prevailing.

6. But the information contained in the official reports on this subject does not appear to warrant this conclusion. It is certain that the ill-treatment of slaves by their masters is not general, if indeed it exists at all, to any great degree; and as a motive in the nature of that adverted to by the Law Commission, as not existing, it is observable that the slave is fed, housed, and clothed by his master. The enactment of a Penal Code abrogating all reference to the Mahomedan law will set aside the rule above mentioned; and under the general provisions for the punishment of assaults, the masters of slaves will by the operation of that "abhorrence of slavery," noticed in the letter from the Officiating Secretary to the Government of India, be deprived of any power which they may now exercise of enforcing obedience by personal correction.

7. Some interval must elapse before the promulgation of a Penal Code; the subordinate functionaries, whose opinions have been required upon that framed by the Law Commission, have not yet all sent in their opinions, and the judges of this court have yet to commence the "laborious revision" of this code imposed upon them, as well as to digest the opinions laid before them. The occupation of their time and attention by their proper judicial duties leaves little leisure for this arduous undertaking.

8. But it does not appear to the Court of Sudder Udalut that in the meantime any special enactment on the subject is required. The observations in the letter under consideration show that there are grave reasons for questioning the expediency of any special legislation on the point in question; and that any practical good, commensurate with the danger of evil, would result from enacting the proposed law, cannot, in the opinion of the Judges of the Sudder Udalut, be expected.

9. With reference to the second question in paragraph 8, it appears to the judges that no satisfactory conclusion as to the claim for compensation could be formed, or estimate as to the quantum of compensation be made, without local inquiries, into which it would not be proper for this court to enter without the special authority of the government.

10. The provisions in the Bombay Code for the punishment of servants would be nugatory in the case of slaves, from whom a fine could not, consistently, be levied, and to whom "ordinary imprisonment without labour" for 14 days would be rather a boon than a punishment.

11. If a law of the nature proposed shall be determined upon, there can, in the opinion of the judges of the Sudder Udalut, be no doubt that the draft Act (A.) would be preferable to (B.), for the reasons stated in paragraph 9, of Mr. Secretary Grant's letter.

12. The latter Act would, in the opinion of the Sudder Udalut, be calculated to occasion serious misconception.

I have, &c.
(signed) *T. H. Davidson*,
Acting Register.

Sudder Udalut Register's Office,
17 July 1839.

(A true copy.)
(signed) *H. Chamier*, Chief Secretary.

No. V.
Powers of a Master over his Slave.

(No. 2037 of 1839.)

Consultations. 2 Sept. 1839. No. 13.

From *L. R. Reid*, Esq. Acting Chief Secretary to the Government of Bombay, to the Officiating Secretary to the Government of India in the Legislative Department.

Sir,

In acknowledging the receipt of your letter, dated the 27th of May last, No. 342, enclosing the draft of a proposed Act, providing that a personal injury or an assault committed on a slave shall be punishable in the same manner as if Committed on a free person, I am directed by the Honourable the Governor in council to transmit to you, to be laid before the Honourable the President in Council, copy of a letter from the Register of the Sudder Foujdaree Adawlut, dated the 20th ultimo, reporting the opinion of the judges of that court, that there is no necessity to pass a special law for the protection of slaves under this presidency, since the laws at present in force are applicable to them, and an offence which would be punishable when committed against a free man would not be exempt from punishment if done against a slave. Judicial Department.

I have, &c.
(signed) *L. R. Reid*,
Bombay Castle, 5 August 1839. Acting Chief Secretary to Government.

(No. 1254 of 1839.)

Consultations 2 Sept. 1839. No. 14. Enclosure.

From *P. W. Le Geyt*, Esq. Register of the Sudder Foujdaree Udalut at Bombay, to *J. P. Willoughby*, Esq. Secretary to Government, Bombay.

Sir,

I am directed by the judges of the Sudder Foujdaree Udalut to acknowledge your letter, No. 1675, dated the 3d instant, giving cover to a despatch from the Officiating Secretary to the Government of India, on the subject of a proposed law, relative to a personal injury or an assault committed on a slave, and requesting their opinion on the same.

2. In reply, I am instructed to observe that there does not appear to be any necessity to pass a special law for the protection of slaves throughout the zillahs of this presidency, as the law in force is as applicable to them as to free men; and no offence done against a free man, is, by the Bombay Code, exempted from punishment, because it is done against a slave.

3. As the power of a master to correct his slave has never been admitted by our Code, the general practice of the magistrates has been against it, although exceptions are quoted in the Note (B.) to the Penal Code; and it is not considered that a strict enforcement of this rule would be looked upon by the community as an infringement of right, or a deterioration of property; for masters are also protected against the misconduct of their slaves, as the Regulations for the punishment of servants, contained in Section 18, Regulation XII. of 1827, have been ruled by this court, under date the 4th November 1830, to be applicable to slaves.

I have, &c.
Bombay Sudder Foujdaree Udalut, (signed) *P. W. Le Geyt*,
20 July 1839. Register.

(True copy.)
(signed) *L. R. Reid*,
Acting Chief Secretary to Government.

Consultations. 2 Sept. 1839. No. 15.

Minute by the Honourable *A. Amos*, Esq., dated 27 August 1839.

The Governor-general expressed a wish that the governments of Madras and Bombay should be consulted on the subject of the expediency of passing the Slavery Act, in order that we might form a more satisfactory judgment as to the propriety of delaying to conform immediately to the instructions for passing the Act, received from the Honourable Court of Directors. In pursuance of the

No. V.

Powers of a Master over his Slave.

recommendation of the Governor-general, advices upon the subject have been obtained from Madras and Bombay. Nothing remains but to forward the papers to his Lordship and to the Home Authorities.

It will be observed, that the Bombay government do not give us any opinion of their own, but it forwards, without comment, the opinion of the Sudder Court of that presidency. The Bombay Sudder Court think that there is not any necessity to pass the special law. They further observe, that such a special law would not work injustice or inconvenience, nor call for compensation, for a reason (the only one assigned) which certainly does not apply to the other presidencies, viz. that in Bombay the magistrate will enforce the services of a slave.

It may be remarked, that the construction given to Sect. 18, Reg. XII. of 1827, of the Bombay Code, by the Bombay Sudder Court, is at least open to very grave doubt in point of law. The operation of this construction, in cases decided with reference to it, seems to call for inquiry.

It is observed by the Bombay Sudder Court, that the power of a master to correct a slave is not recognised by the Code, nor by the general practice of magistrates. This, as to immoderate correction, is the established law of the country, and practice of magistrates over the whole of India. The only question upon the subject regards moderate correction for misconduct. According to the Bombay judges, this also is prohibited by the Bombay Code, because not admitted by it. I think it would be satisfactory to ask the Bombay judges, whether they hold, upon the same grounds, that it is punishable in a master to give moderate correction to a servant, young or old, not being a slave? And whether, in point of fact, these cases of moderate correction by masters are not of a nature that they seldom, if ever, are brought before a magistrate? With regard to the "general practice" spoken of, I should like the Bombay judges to be asked how many cases of moderate correction they adverted to as constituting such general practice.

The Madras government and Sudder Court both concur with the Supreme Government in thinking that there are grave reasons for questioning the expediency of the proposed law; and they say that no practical good, commensurate with the danger of evil, can be expected to result from the proposed law.

With regard to the question of compensation, it is the opinion of the Madras authorities that it cannot be satisfactorily disposed of without further local inquiry. This alone is a strong reason for not passing the Act immediately.

The Madras authorities consider that a Regulation similar to that in the Bombay Code would not answer for the Madras presidency, either as regards servants or slaves, but more particularly as regards slaves. But if servants are punishable by moderate correction within the Madras presidency, then the judges are not right in saying, that no comparison can arise in the Madras presidency between the condition, in this respect, of servants and of slaves under the proposed Act. I have before observed, that the point is doubtful under the English law, Hawkins laying it down broadly that a master may correct his servant, and the right being recognised by more unequivocal authority in the case of apprentices.

The Madras authorities think that an Act, in the express terms of Note (B.), would be calculated to occasion serious misconception.

(signed) *A. Amos.*

(No. 472.)

Consultations. 2 Sept. 1839. No. 16.

From *J. P. Grant*, Esq. Officiating Secretary to the Government of India, to *L. R. Reid*, Esq. Acting Chief Secretary to the Government of Bombay.

Legislative Department.

Sir,

I AM directed by the Honourable the President in Council to acknowledge the receipt of your letter, No. 2037, under date the 5th ultimo, with its enclosure, and, in reply, to communicate the following observations.

2. His Honor in Council is of opinion, that for the purpose of the Report on Slavery, as well as with respect to the particular Act under consideration, it will be desirable to inquire of the Company's advocate at Bombay, whether, in any proceedings for false imprisonment, the Bombay Regulation would amount to a

legal

No. V.
Powers of a Master over his Slave.

legal justification, the person imprisoned being a slave, and not under any specific contract of service.

3. It is desirable also to inquire of the judges of the Sudder Foujdary Adawlut, at Bombay, what is the number of cases in which the Regulation has been put in force against slaves; and whether, under the Bombay Regulations, a master punishing a servant (not being a slave), young or old, by moderate correction, for gross negligence or misconduct, would be punishable as for an assault.

4. With regard to the "general practice of magistrates," there is no doubt that, as regards immoderate correction, or even moderate correction without fault, every kind of law, and the universal practice of magistrates throughout India, is in favour of the slave. What his Honor in Council particularly desires to know is, whether the Sudder Foujdary Adawlut mean that the general practice applies to moderate correction for negligence or misconduct. If such be the case, he is further desirous of being informed of the number of cases in which masters have been punished by magistrates for moderate correction of their slaves.

I have, &c.

Fort William,
2 September 1839.

(signed) *J. P. Grant*,
Officiating Secretary to the Government of India.

(No. 471.)

From *J. P. Grant*, Esq. Officiating Secretary to the Government of India, to *T. H. Maddock*, Esq. Officiating Secretary to the Government of India, with the Governor-general.

Consultations.
2 Sept. 1839.
No. 17.

Sir,

Legislative Dep.

In continuation of my letter, No. 359, of the 27th May last, I am directed by the Honourable the President in Council, to forward to you, for the information of the Right honourable the Governor-general of India, copies of the papers, as noted on the margin, respecting the Slavery Act.

Letter from the Chief Secretary to the Government of Fort St. George, dated 30 July 1839, with Enclosure.
Letter from the Acting Chief Secretary to the Government of Bombay, dated 5 August 1839, with Enclosure.
Minute by the Hon. Mr. Amos, dated 27 August 1839.
Letter to Acting Chief Secretary to the Government of Bombay, dated 2 September 1839.

I have, &c.

Fort William,
2 September 1839.

(signed) *J. P. Grant*,
Officiating Secretary to the Government of India.

From *T. H. Maddock*, Esq. Officiating Secretary to the Government of India, with the Governor-general, to *J. P. Grant*, Esq. Officiating Secretary to the Government of India, Fort William.

Consultations.
21 October 1839.
No. 1.

Sir,

Legislative.

I am directed to acknowledge the receipt of your letter, No. 471, dated the 2d instant, with enclosures, respecting the Slavery Act, and to state, in reply, that the Governor-general will await the receipt of the answer of the Law Commissioners to the letter addressed to them by order of the Honourable the President in Council, on the 27th May last, No. 222, before he records any opinion on the papers submitted with your letter under acknowledgment.

I have, &c.

Simla,
30 September 1839.

(signed) *T. H. Maddock*,
Officiating Secretary to the Government of India,
with the Governor-general.

No. VI.
Oaths and Declarations of Native Witnesses.

—(A.) No. VI.—

CONCERNING THE OATHS AND DECLARATIONS OF NATIVE WITNESSES.

Cons.
10 Nov. 1839.
No. 8.

(No. 468.)

From *J. P. Grant*, Esq. Officiating Secretary to the Government of India, to *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission.

Legislative.

Sir,

I AM directed by the Honourable the President in Council to request that you will lay before the Indian Law Commissioners, for their information, the accompanying draft of a proposed Act for the examination of native witnesses, which was read in Council for the first time on the 21st ultimo, together with the accompanying copy of a letter from the government of Bengal, dated the 11th of July last, with its enclosures.

2. With Mr. Secretary Macnaghten's letter of the 8th of August 1836, No. 206, papers connected with the question of "the abolition of oaths by prosecutors and witnesses in civil and criminal cases" were referred to the Commissioners for consideration at the proper stage of their proceedings. The Commissioners will observe, that the proposed Act does not abolish judicial oaths. That is a question on which the President in Council, even if he thought the circumstances of the country called for an early decision upon it, would be reluctant to legislate, in anticipation of the expected report of the Commissioners on judicial procedure. The intention of the proposed Act is to retain the substance of an oath, but to do away with certain forms of swearing now in use as respects the generality of witnesses, and to take away from courts the discretion now possessed by them of forcing a witness to make oath in the usual form, which is generally disliked, and often strongly objected to, or of allowing him, as a special favour and mark of distinction, to subscribe instead a solemn declaration, which is not objected to.

3. The judges of the Courts of Sudder Dewanny and Nizamut Adawlut at Calcutta have now come unanimously to the opinion that the present practice is faulty, both in imposing usual forms of making oath which are objected to by many witnesses, and in allowing a distinction to be made at discretion in the case of superior classes of witnesses, whereby the usual forms of making oath are further discredited. It is strongly represented that a failure of justice arises from the existing practice.

4. Under these circumstances, the President in Council, fully agreeing with the court, being aware of no objection to the principle of the proposed modification of the form of making oath, and thinking that upon a question so free from difficulty, and of such practical importance in the daily administration of justice, any delay would be prejudicial to the public interest, has in concurrence with the opinion of the Governor-general prepared the present Draft Act, which has been ordered for reconsideration on the first meeting of the Legislative Council after the 21st day of January next. He directs me to request that you will inform the Commissioners that he does not solicit any report from them upon the subject, or desire that the consideration of it should interfere with the matters at present engaging their attention. But should any objections to the draft occur to them, or should any modifications therein be proposed by them, the observations of the Commissioners will meet with the attentive consideration of the Legislative Council.

5. The Draft Act, as its effect is general, has been submitted for the observations of all the local governments, to be forwarded after communication with the sudder courts.

I have, &c.

Council Chamber,
18 November 1839.

(signed) *J. P. Grant*,
Offg Secy to the Govt of India.

No. VI.
Oaths and Declarations of Native Witnesses.

Cons.
21 Oct. 1839.
No. 25.

FORT WILLIAM, Legislative Department, the 21st October 1839.

The following Draft of a proposed Act was read in Council for the first time on the 21st October 1839.

ACT No. —— of 1839.

AN ACT for the Examination of Native Witnesses.

1. WHEREAS obstruction to justice has arisen owing to the unwillingness of native witnesses to give testimony in consequence of their being compelled to be sworn upon the Koran or by the Water of the Ganges, or according to other forms which are repugnant to their consciences or feelings;

It is hereby enacted, that no native witness shall be compellable in any court of justice to make oath or declaration otherwise than according to the following effect:

> "I solemnly affirm and declare, in the presence of Almighty God, that I will faithfully and without partiality answer make to all such questions as shall be demanded of me touching the matter now before the court, which shall be the truth, the whole truth, and nothing but the truth."

2. And it is hereby provided, that if any person making such affirmation or declaration shall be convicted of having wilfully and falsely affirmed or declared any matter or thing, which, if it had been sworn previously to the passing of this Act, would have amounted to wilful perjury, every such offender shall be subject to the same pains, penalties, and forfeitures to which persons convicted of wilful perjury were subject before the passing of this Act.

3. And it is hereby provided, that this Act shall not extend to any proceedings in any of Her Majesty's courts of justice.

Ordered, that the draft now read be published for general information.

Ordered, that the said draft be reconsidered at the first meeting of the Legislative Council after the 21st day of January 1840.

J. P. Grant,
Officiating Secretary to the Government of India.

(No. 3.)

From *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission, to *J. P. Grant*, Esq. Officiating Secretary to the Government of India, Legislative Department.

Cons.
24 Feb. 1840.
No. 7.

Sir,

BY direction of the Indian Law Commission, I have the honour to acknowledge receipt of your letter, dated 18th November 1839, with draft of an Act for examination of native witnesses, and correspondence relative to it.

2. The Law Commissioners have carefully considered the above-mentioned draft and correspondence, as well as a further letter from the Presidency Sudder Dewanny and Nizamut Adawlut to government, which has been communicated to the Law Commission by the President. They have prepared a new draft Act, which they direct me respectfully to submit to the consideration of government, with the following observations.

3. In the opinion of the Law Commissioners, no oath or declaration ought to be a necessary ingredient in the offence of giving false evidence. They think that a person accused of causing ruin or disgrace or death to another by means of testimony which he has given, knowing it to be false, ought not to be allowed to defend himself against the accusation, by showing that he had not sworn or solemnly declared that his testimony was true. It may be admitted that some formal commencement of the judicial examination is desirable in every case, in order that the witness may know distinctly the moment at which his statements begin to affect the interests of the parties; and as in many cases it is also desirable that the witness should be warned of the obligation under which he is placed to speak the truth, the best course seems to be, that such a warning should be the formal commencement, and should for that purpose be made a necessary ingredient in the offence of false testimony. The law in the Presidency of Bombay is already in accordance with this principle.

No. VI.
Oaths and Declarations of Native Witnesses.

4. The Commissioners, however, direct me to make the above statement of their opinions only, with a view to prevent misconception of their views with regard to the ultimate settlement of the law upon this subject. In the accompanying draft, they have assumed, according to the avowed intention of government, that the oath or declaration is for the present to continue a necessary ingredient in the offence of false testimony whenever it is so by the existing law.

5. The Commissioners think that the new Act should not be confined to the oaths of witnesses properly so called, but should extend to all oaths taken in judicial proceedings. By Act No. XXI. of 1837, provision is made in respect to all oaths except those required to be taken in any judicial proceedings. If, therefore, the new Act is made applicable to all cases which are excepted from No. XXI. of 1837, there will be no case which is not provided for under one or other of these Acts.

6. As the inconvenience which calls for immediate legislation is felt only in the case of Mahomedans or Hindoos, the draft of the Law Commission may, perhaps, seem unnecessarily general. But the Commissioners think that any legal distinctions founded upon differences of religious opinion are as much as possible to be avoided; and it seems perfectly possible to avoid such a distinction in this instance without any risk of offending prejudices, or of in any degree weakening the credibility of testimony.

7. As the form of affirmation given by the draft contains an assertion that it is made in the presence of God, it may possibly offend the scruples of Quakers, Moravians, and others, who think that the precept against swearing, which is found in the Gospel, is to be understood as applicable to judicial oaths; and if the Jains and Budhists do not, as some allege, believe in a Supreme Being, the assertion would no doubt be offensive to a conscientious professor of those religions. In England, the scruples of Quakers and Moravians have met with indulgence. The scruples of individuals not belonging to those sects, but who may happen to share their opinions upon this particular point, and those of atheists, have not been thought worth attending to. This seems wrong in principle; and if there are, as is alleged, large sects of atheists in this country, it is not only wrong in principle, but must be mischievous in practice. For these reasons, the Commissioners have inserted a provision that the form may be varied so as to avoid shocking the conscience of the witness.

8. The Government is aware that in civil cases, the principal sudder amins, sudder amins and munsiffs, in the Bengal Presidency, and the district munsiff, in the Madras Presidency, are authorised at all times to cause the examination of a witness to be taken without an oath, and even without a solemn declaration, whenever the parties in the suit, or their respective vakeels, may agree to such witness being so examined; while in the latter presidency, in civil cases tried before village munsiffs and punchayets, the general rule is to dispense with oaths; those judicatories, however, being authorised to administer oaths where they deem it necessary. In the Madras Presidency also, oaths are dispensed with by law in all proceedings before heads of district police, not only in cases to be tried by the superior criminal courts, in which they conduct the preliminary investigations, but also in cases determinable by themselves, or on their report by the magistrates; and may be dispensed with by the magistrates, at their discretion, in their personal examination of complaints for petty offences and petty thefts, upon which they are competent to pass judgment.

9. No provision is made in the Bengal and Madras Regulations for the punishment of persons giving false testimony in cases in which oaths are so dispensed with. Possibly such persons may be punishable under the Mahomedan law, but the Commissioners think it right to bring the silence of Regulations to the notice of government.

10. Government is also aware that in the Presidency of Bombay no oath or declaration by the witness is necessary to constitute the offence of perjury; it is sufficient if there has been an admonition by the court. As the Commissioners highly approve of this provision, they of course do not propose to alter it; and the only reason why they do not recommend its extension to the other presidencies upon this occasion is the avowed intention of Government to retain an oath or declaration by the witness.

11. The details, however, of the Bombay code on the subject are not quite satisfactory. In the part relating to civil judicature, it is provided, immediately after

after the admonition, that "a witness who after being admonished, wilfully gives false evidence before the court, shall be deemed to have committed perjury, and shall be liable to punishment accordingly." (Regulation IV. of 1827, s. 34, c. 2.)

12. In the part relating to criminal judicature, there is no corresponding provision, although the admonition itself is in precisely the same terms as that provided for civil cases, and concludes by warning the witness, that "he will be liable to punishment as a false witness." (Regulation XIII. of 1827, s. 34, c. 2.)

13. In the part relating to the offence of perjury nothing is said of any admonition by the judge, and it is only provided, that "any person who shall wilfully make a false statement upon oath or solemn declaration before any authority empowered by Regulation to administer the same, shall be subject to the punishment of perjury." (Regulation XIV. of 1827, s. 16, c. 1.)

14. Moreover, the legislature which enacted the Bombay code, was not competent to bind the Supreme Court. It seems, therefore, at least doubtful, whether a British subject who has taken no oath, but has only been admonished by the judge, can be convicted of perjury by that court for any evidence he may have given in a Mofussil court.

15. These defects, if such they are, will be supplied by the general provisions of the draft.

16. The Commissioners have considered whether it is expedient to make any express provision for the punishment of persons who may refuse to make affirmation according to the new Act, and they have come to the conclusion that it is not expedient. Their reason is, that in the great majority of cases there is no express provision in the Regulations for the punishment of those who may refuse to take any of the oaths or declarations now in use. The power to punish for such refusal is understood to be included in the power to punish for refusing to give evidence; and this latter power will of course equally include a power to punish for refusing to make affirmation under the new law.

17. As the Government intends to except from the Act the courts established by Her Majesty's Charter, it will sometimes happen that a witness who has made affirmation in one form when deposing against a prisoner before a justice of the peace, will have to make oath or affirmation in a different form upon the trial of the prisoner before the Supreme Court. This will be a great anomaly; but not greater than would exist if the proceedings before justices of the peace had been excepted from the Act. For in that case, a magistrate would have had to use one form when taking depositions preparatory to a trial in the Supreme Court, and another when taking evidence in cases within his own jurisdiction.

18. The Commissioners have used the word "affirmation" instead of "declaration" because the latter word is always translated in the Regulations by words which mean a written oath, as distinguished from an oral oath.

I have, &c.

Indian Law Commission,
3 February 1840.

(signed) *J. C. C. Sutherland,*
Secretary.

DRAFT ACT.

Cons. 24 Feb. 1840. No. 8. Enclosure.

1. WHEREAS obstruction to justice has arisen from the unwillingness of natives to be sworn upon the Koran or by the Water of the Ganges, or according to other forms which are repugnant to their consciences; and whereas it is desirable that, as far as the diversity of religious opinions and feelings will allow, one form of affirmation should be substituted for the various forms now in use in judicial proceedings, it is therefore hereby enacted, that in all cases in which in any stage of any judicial proceeding any oath, solemn declaration or affirmation is required by law, or by any authority empowered to require the same at his discretion, the following form of affirmation shall be used, unless the person called upon to make such affirmation shall satisfy the authority administering the same that such affirmation is repugnant to his conscience;

No. VI.
Oaths and Declarations of Native Witnesses.

"I solemnly affirm, in the presence of Almighty God, that the information which I shall give, and the answers which I shall make to all such questions as shall be demanded of me touching the matter under inquiry, shall be the truth, the whole truth, and nothing but the truth."

2. And it is hereby enacted, that if the person called upon to make such affirmation shall satisfy the authority administering the same, that such affirmation is repugnant to his conscience, then such other form of affirmation shall be used as, without being repugnant to the conscience of such person, may approach most nearly to the above form.

3. And it is hereby enacted, that nothing in the 1st or 2d section of this Act shall extend to any proceeding in any of the courts established by Her Majesty's Charter.

4. And it is hereby enacted, that any person who shall make any statement after he shall have made affirmation as above, which statement would have rendered him guilty of the offence of perjury if he had made it after having taken an oath in any of the forms now in use, shall be guilty of the offence of false testimony.

5. And whereas it is provided by several Regulations of the Bombay code, that before a witness gives evidence, the court shall admonish him in the following or similar words:

"Be careful that you tell to the court the whole truth, and nothing but the truth, in the matters on which you are now to be examined, or otherwise you will be liable to punishment as a false witness."

6. It is hereby enacted, that any witness who shall make any statement after he shall have been so admonished by the court, which statement would have rendered him guilty of perjury if he had made it after having taken an oath in any of the forms now in use, shall be guilty of the offence of false testimony.

7. And it is hereby enacted, that any person accused of false testimony may be tried, and if convicted, shall be punished as if he had been convicted of perjury, by any court, whether established by Her Majesty's Charter or otherwise, which would be competent to try such person for perjury.

8. And it is hereby enacted, that any person accused of subornation of false testimony may be tried, and if convicted, shall be punished as if he had been guilty of subornation of perjury, by any court, whether established by Her Majesty's Charter or otherwise, which would be competent to try such person for subornation of perjury.

(signed) *J. C. C. Sutherland,*
Secretary.

Indian Law Commission,
3 February 1840.

Cons. 24 Feb. 1840. No. 9.
Examination of Witnesses.

MINUTE by the Honourable *A. Amos*, Esq., dated 1840.

HAVING now before us answers to all our letters upon the subject of judicial oaths, it will be necessary to advert to the following points for consideration:

1. Is it expedient to substitute a simple form of declaration for the forms of oaths and declarations now in use.

The Upper and Lower Bengal Sudder courts, the Law Commission, the Governor of Madras, and apparently the Sudder court of Bombay, are all in favour of the change. The Sudder court of Madras and Mr. Bird of the Madras government, who are of an opposite opinion, apparently on the ground that it is inexpedient to relinquish a religious safeguard for the truth of judicial testimony, do not advert to the circumstance, that the proposed declaration partakes of a religious character, a circumstance which is thought very material by both the Bengal Sudder courts.

Although it may be thought a real objection, that the substituted form will probably fail of affecting some consciences which the old forms now influence (though we are informed by the Bengal Sudder judges that perjury now prevails "to a fearful extent" in the Mofussil courts), yet considering how difficult it is to find out that peculiar form of adjuration will have effect on the conscience of particular native witnesses, and considering, as observed by the Bengal Sudder judges, that the "present forms operate as impediments to the appearance of a more respectable class of witnesses than are now generally brought

No. VI.
Oaths and Declarations of Native Witnesses.

brought forward," and that their repeal would lead to "producing evidence of a superior and more credible character," and adverting to the opinion of the same judges that a solemn form of declaration will be "fully efficacious," whilst the influence of civil penalties and other safeguards is not to be overlooked; I think the balance of expediency is much in favour of the proposed alteration. It seems clear that the discretion left at present with the magistrate does not afford to the minds of native witnesses security against the obnoxious forms being forced upon them; and, moreover, by creating an invidious distinction between the modes of delivering testimony by the higher and lower orders, it renders native witnesses still more averse to taking oaths, as not being merely offensive to their consciences, but also derogatory to their respectability.

Lastly, the English Legislature has virtually relieved native witnesses, when brought forward in Her Majesty's courts, from affording any religious guarantee for their testimony.

2. It is expedient to go further than we have done as regards natives, and relieve them in the Mofussil courts from affording any religious guarantee for their testimony.

The English statute and the practice of the Supreme Court of Calcutta are in favour of this view, and this is recommended by the Law Commission. It is also strongly advocated by the Governor of Madras.

But I think that in adopting such a measure, we should be acting contrary to the opinions of both the Bengal Sudder courts, and should be departing much more widely than at present from the views of the Madras Sudder; and, as far as we can collect from the information before us, the principal evils of the present system will be remedied, without proceeding to this length. Indeed, the judges of the Bengal Sudder observe, that the substitution of a solemn form of declaration will be "fully efficacious;" whilst, on the other hand, the dispensing with all religious reference may be thought to occasion some risk, at least, of endangering the credibility of native testimony. The grounds of Lord Elphinstone's opinion, that the Act will be construed into an insult upon the native community, if they are released from oaths, whilst oaths are required from Europeans, does not appear to be well founded; for the proposed form of affirmation, if it be not strictly an oath (which it may not unreasonably be considered), is at least of a religious character, and founded on a belief that the witness is under the influence of religious motives. It may, moreover, be well doubted whether the natives would advert with any anxiety to the distinction supposed to be obnoxious; a distinction which, it is to be observed, has long been practically enforced in the Supreme Court. Should the Act, according to suggestions which will be presently considered, be extended to European witnesses in the Mofussil courts, or to all courts, the ground of some of Lord Elphinstone's objections will thereby be partially or totally removed; but if the Act is to be so extended, it will behove us to be practically cautious as to taking away the religious guarantee. Though the views of Lord Elphinstone and of the Law Commissioners (the latter of whom would do away with all declarations of any kind) are reasonable, if regarded in the abstract, yet if the state of opinion, feelings, and education of the various grades of Europeans are considered, I think that by taking away all the religious character of judicial testimony, especially if all declarations were superseded, it might materially impair the credibility of European evidence. Indeed, as regards the Supreme Courts, I do not think that we should be justified in adopting a measure so much opposed to the principles of the English law of evidence, and the practice of the courts in England, without a reference to the Home authorities.

3. One of the most difficult points for our consideration is, whether the Act should be limited to Hindoos and Mahomedans, or to native witnesses, or should include all witnesses in the Mofussil courts. In favour of the latter course it is to be observed, that there is much advantage in uniformity, that any possible invidiousness of distinction (as apprehended by Lord Elphinstone) will be obviated, and "that it is desirable to avoid legal distinctions founded upon the expenses of religious opinion," when it can be done, as the Law Commissioners think it can be in the present case, "without any risk of offending prejudices, or in any degree weakening the credibility of testimony." There is, besides, some inconvenience in a native judge administering the present form of English oath, though in England the judges frequently administer,

No. VI.
Oaths and Declarations of Native Witnesses.

through their Christian officers, Pagan and other oaths, without any complaint having been made on that account; moreover, there will be some difficulty (though perhaps of no great consequence, if practically considered) in the application of the term "native witnesses." It has been represented, that if the Act were confined to Mahomedans and Hindoos, the Parsees and others would consider that they had an equal title to be released from the ritual of testimony now required from them. It is to be noticed that the Law Commission and the Upper Sudder court wish the proposed form to be applied to European witnesses in the Mofussil courts. This point does not appear to have undergone consideration by any other authorities, excepting Lord Elphinstone, who goes beyond it.

Though as the proposed form of affirmation partakes of a religious character, much of the objection arising from the departure from the English custom of delivering testimony by English witness is removed, yet I think, with deference to the opinions of my colleagues of the Commission, that such departure would be attended with a risk of "in some degree impairing the credibility of European testimony," whilst it appears to me objectionable to be swearing English witnesses by different forms in the Queen's and Company's courts; a consequence which must follow, if the Act is passed as drafted by the Commission; and I incline to think that any meddling with the English form of oath according as it had been administered hitherto in the Company's courts, without complaint or objection, would not be favourably regarded by the Home authorities.

As regards depositions taken before justices of the peace, the proposed extension of the Act to European witnesses will lead to the reception of evidence given by English witnesses (depositions being readable after the death of the witnesses) in the Supreme Courts in a less solemn form than heretofore. With regard to the term "native witnesses," it is to be observed that none of the Sudder courts suggest any difficulty in giving a practical application to that term. It is, in fact, the very term employed by the English Legislature in the clause of the statute by virtue of which the Supreme Court dispenses with an oath; the term has not created difficulties there. Should a few doubtful cases arise by possibility, it is a matter of very trifling importance, considered with reference, on the one hand, to the multitude of persons who undoubtedly would be included, or, on the other, would be as clearly excluded, if the term "native witnesses" be employed. I may further notice an objection of considerable importance, that it will be seen, under the next head, that if one Act contain any religious reference, and be extended to European witnesses, an exception must be introduced, the framing of which will be attended with much difficulty; lastly, it is very important, with reference to the present head, to bear in mind that the emergency which occasions us to legislate has no reference at all to European witnesses.

4. The next question is likewise one of considerable difficulty: it is whether, if the witness objects to our prescribed form, and points out another which is more congenial to his feelings or conscience, any option shall, under restrictions or otherwise, be allowed to the witness.

In the first place, it is very necessary to advert to a distinction, a disregard of which may lead to much confusion. The discretion exercised under the existing Regulations by functionaries is very different in its nature from that which is now to be considered according to the discretion conferred by the Regulations; every witness apprehends that the functionary may, if he pleases, subject him to what is revolting to his conscience and feelings; and, moreover, the functionary is directed to exercise his discretion with reference to the condition rather than to the conscience of the witness. According to the discretion we are about to consider, and which has reference only to the conscience of the witness, the worst that can happen to a witness is, that he may be obliged to take our very simple form of affirmation; so simple, indeed, that so long as any religious reference is retained, any substitution for it would seem to be more obligatory on the witness, and, therefore, *primâ facie*, more likely to be objectionable to him. It may be thought, for instance, that it is very improbable that a witness would be deterred from entering a court of justice, because, under the new Act, the magistrate might, in his discretion, refuse him the Ganges Water or Koran. On the other hand, it may be observed, that simple as our proposed form of declaration is, the taking of it will be deemed derogatory

if

if any discretion as to other forms be permitted; nay, further, that some witnesses might require to be sworn according to the present or other idolatrous forms, which are revolting to some civil servants of extreme religious opinions, and who are at present, in consequence, out of employ. There appears to be more weight in another objection of the Allahabad court, provided it be well founded, viz. That all parties would be disposed to object that witnesses adopting the new form intended to give false testimony, and on that account avoided the more solemn forms of adjuration at present in use. This objection, however, is somewhat weakened by the consideration, that the ordinary form would be that proposed from the Act, and that any deviation from that form would be regarded as an exception, to be allowed reluctantly, and only after strict inquiry; moreover, as respectable persons will not generally swear upon the Ganges Water or Koran, their motives in not objecting to the ordinary form which the judge would propose could not be suspected; and any objection founded upon this circumstance would have no influence on other natives who felt the same scruples as to the existing forms. It may be further observed, that the English law of evidence accommodates the form of oath to the consciences of particular witnesses.

With regard to the evasion of justice suggested by the Allahabad court, by means of feigning that a particular form is binding on the conscience, and the case cited of a Mahomedan who gave false testimony after being sworn as a Hindoo, and was, under these circumstances, acquitted, I can only say that the decision appears to me so repugnant to law and to common sense, as to deprive the argument founded upon it by the Allahabad court of any further weight in the present discussion, than as showing the advantage of extremely definite and simple rules, leaving as little as possible to the discretion and judgment of the authorities, in order to guard against the aberrations of even a Sudder court.

If we extend the Act to European witnesses in the Mofussil courts, we must, I think, make an exception, though it be almost theoretical, merely for Quakers and Moravians; I think this would be required by the Home authorities. The Law Commission think that atheists and some particular Indian sects should be excepted also. I do not feel the force of this as a practical point; if excepted, they should clearly not be named expressly. There will be a difficulty in making any exception at all, and not making it general; and it will be observed that the Law Commissioners have accordingly made the exception a general one, and have even allowed all natives under the exception to be examined at the discretion of the magistrate, without any religious guarantee, which, I fear, would soon render the form prescribed in the Act derogatory in their estimation.

On the whole, if the Act be confined to native witnesses, it may be deserving of consideration, whether it will not be most advisable to prescribe a simple form of declaration imperatively; we can afterwards allow of a discretion, if the necessity for it be practically indicated, in which case we may be able to judge better than at present what kind of discretion should be permitted. It may be thought more easy to add than to withdraw a discretion by future legislation. If the Act is to be extended to European witnesses, I think an exception will be necessary for Quakers and Moravians; but whether the judge should be authorised to receive the testimony of other European witnesses without either oath or religious declaration, seems to require much consideration. It must be borne in mind, with reference to this exception, that the discretion is not limited to witnesses and courts of justice, but is given to all authorities in any stage of a judicial proceeding.

5. The next question relates to extending the original scope of the Draft Act, (which was founded on the immediate grievance complained of) to all oaths and declarations not included in Act XXI. of 1837.

This seems to be thought desirable by the Bengal Lower Sudder court, and is recommended by the Law Commission; I know of no objection against it, and I think it advisable on various grounds.

6. The next question relates to the discretionary powers at Madras and Bombay, of dispensing with or requiring an oath at the discretion of the functionary, and the preliminary admonitions contained in the Bombay code.

Though I do not agree with the rest of the Law Commission in their eulogies of the Bombay practice, yet as no practical inconvenience is complained of by

No. VI.
Oaths and Declarations of Native Witnesses.

the Bombay or Madras authorities, I think it would be inexpedient to interfere with the practice that has prevailed in those presidencies, further than prescribing that when an oath or declaration is taken or made, it shall be in conformity with the provisions of the Act.

7. As to the technical form of the draft prepared by the Law Commission, on re-perusing the draft, subsequently to my conference with the Commissioners, I do not like making a new created offence as "false testimony," and rather prefer the terms suggested by the Lower Sudder court. I submit another draft, not in preference, but to assist the Council in deciding upon the various points for consideration.

Cons. 24 Feb. 1840. No. 10.

AN ACT for amending the Oaths and Declarations required from Natives of *India*.

1. WHEREAS obstruction to justice and other inconveniences have arisen in consequence of the natives of India being compelled to swear upon the Koran, or by the Water of the Ganges, or according to other forms which are repugnant to their consciences or feelings;

It is hereby enacted, that, except as hereinafter provided, instead of any oath or declaration now authorised or required by law, every native of India shall make the following affirmation:

> "I solemnly affirm, in the presence of Almighty God, that what I shall state shall be the truth, the whole truth, and nothing but the truth."

2. And it is hereby enacted, that if any native witness making such affirmation as aforesaid shall wilfully and falsely state any matter or thing, which, if the same had been sworn before the passing of this Act, would have amounted to perjury, every such offender shall be subject, as well in her Majesty's courts as in those of the East India Company, to the same punishment to which persons convicted of perjury were subject before the passing of this Act.

3. And it is hereby enacted, that any person causing or procuring another to commit the offence defined in the second section of this Act, shall be subject, as well in Her Majesty's courts as in those of the East India Company, to the same punishment to which persons convicted of subornation of perjury were subject before the passing of this Act.

4. And it is hereby provided, that this Act shall not extend to any declaration made and subscribed under the authority of Act No. XXI. of 1837, or to any declaration made in any of Her Majesty's courts of justice.

Cons. 24 Feb. 1840. No. 11.
On Hindoo and Mahomedan Oaths.

MINUTE by the Hon. *W. W. Bird*, Esq., dated the 21st February 1840.

I CONCUR with Mr. Amos that the draft submitted by the Law Commission will not answer the purpose intended, inasmuch as it goes far beyond the object in view, and provides for the exercise of that very discretion the withdrawal of which was considered indispensably necessary.

Indeed the new draft prepared by Mr. Amos appears to me to go too far; the object originally proposed was merely to provide, by a legislative Act, that no other form of adjuration should in any case be exacted from Hindoos and Mahomedans than that of solemn declaration, which is laid down in special cases only.

Such was the utmost extent of the change proposed to be introduced; and to a measure of this limited character, it ought, I think, for the reasons already assigned at former consultations, to be restricted.

Its extension to any other class, especially to persons of the Christian persuasion, whether Europeans or natives, would be attended, as the papers under consideration clearly show, with great inconveniences.

Mr. Amos's new draft, slightly altered, will remove the obstructions to justice complained of without creating any of those difficulties which will arise if the Act be allowed a more extended scope.

(signed) *W. W. Bird.*

No. VI.
Oaths and Declarations of Native Witnesses.

MINUTE by the Right honourable the Governor-general, dated the 24th February 1840.

Cons.
24 Feb. 1840.
No. 12.

ABOLITION OF OATHS ACT.

I AM entirely of opinion that this Act should be passed upon the principles on which we agreed when it was first before us in draft. That principle retains an affirmation with a religious sanction; in fact, all the substance of an oath; and I do not apprehend that Europeans will be dissatisfied because we relieve Hindoos and Mahomedans from forms which are obnoxious to them; and, as I have before stated, I am not now prepared to extend the measure to the discontinuance of the religious sanction, which would be an extreme departure from what has yet been admitted in English jurisprudence.

(signed) *Auckland.*

ACT No. V. OF 1840.

Cons.
24 Feb. 1840.
No. 13.

Passed by the Right honourable the Governor-general of India in Council, on the 24th of February 1840.

AN ACT concerning the Oaths and Declarations of Hindoos and Mahometans.

1. WHEREAS obstruction to justice and other inconveniences have arisen in consequence of persons of the Hindoo or Mahometan persuasion being compelled to swear by the Water of the Ganges, or upon the Koran, or according to other forms, which are repugnant to their consciences or feelings;

It is hereby enacted, that except as hereinafter provided, instead of any oath or declaration now authorised or required by law, every individual of the classes aforesaid within the territories of the East India Company shall make affirmation to the following effect:

> "I solemnly affirm, in the presence of Almighty God, that what I shall state shall be the truth, the whole truth, and nothing but the truth."

2. And it is hereby enacted, that if any person making such affirmation as aforesaid shall wilfully and falsely state any matter or thing, which, if the same had been sworn before the passing of this Act, would have amounted to perjury, every such offender shall be subject in all courts to the same punishment to which persons convicted of perjury were subject before the passing of this Act.

3. And it is hereby enacted, that any person causing or procuring another to commit the offence defined in the second section of this Act, shall be subject in all courts to the same punishment to which persons convicted of subornation of perjury were subject before the passing of this Act.

4. And it is hereby provided, that this Act shall not extend to any declaration made under the authority of Act No. XXI. of 1837, nor to any declaration or affirmation made in any of Her Majesty's courts of justice.

No. VII.
Suppression of Affrays concerning Indigo.

—(A.) No. VII.—

SUPPRESSION OF AFFRAYS CONCERNING INDIGO.

(No. 49.)

Consultations. 16 Sept. 1839. No. 1.

From *J. P. Grant*, Esq. Officiating Secretary to the Indian Law Commission, to *W. H. Macnaghten*, Esq. Secretary to the Government of India, in the Legislative Department.

Sir,

I AM directed by the Indian Law Commissioners to request that you will submit to the consideration of the Right honourable the Governor-general of India in Council the following observations on the subjects noticed in the latter part of your letter to the address of Mr. Millett, dated the 28th of December 1835.

2. In the sixth paragraph of that letter, after noticing the unanimous opinion of the Law Commissioners, that it would be inexpedient to enact any law specifically for the more effectual suppression of affrays concerning indigo, you conveyed an intimation of the expectation of the government that this important subject, in all its bearings, would receive from the Commission that attentive consideration which it deserves. I am now directed to report that this subject has again been taken up by the Commissioners, during the preparation of the Penal Code lately submitted to government, and has been maturely considered. The Law Commissioners are of opinion, that everything which can be effected by penal laws, towards the suppression of affrays of the nature in question, would be effected by the enactment of that code, in which, besides the provision of suitable penalties for committing extortion, trespassing, rioting, inflicting bodily hurt, or committing culpable homicide, as the case may be, a peculiar provision has been made, with a view to check an unnecessary resort to violent measures, in cases of a disputed right of possession, even on the part of a person defending a rightful claim.

3. The chief peculiarity in these affrays is this, that they are supposed to be originated by parties who do not appear in them openly. The Penal Code would make such parties liable to the same punishment with those who are openly engaged in committing the offence. The detection of such parties, and their conviction, must depend greatly on the vigilance of the police, and the existence of reasonable rules of evidence. The vigilance of the police is, of course, matter for the sole consideration of the executive government; but the Law Commissioners hope shortly to submit for consideration a project of a law of evidence, such as they consider to be best adapted for the ascertainment of truth.

4. Whatever further provisions of law may be necessary, in order to the more effectual prevention of affrays of this sort, will be considered in connexion with the code of criminal procedure.

5. With respect to the question of enacting a law for the pounding of cattle, the Law Commissioners observe, that a part of this question has been disposed by them by the provisions in the Penal Code on the subject of trespass, by which the intentional driving of cattle on the property of another party would be a punishable offence. The rest of this question, together with the entire question of enacting a law to provide for the registration of deeds, including indigo contracts, must, as observed by the Honourable the late Governor-general of India in Council, lie over until these questions shall respectively arise in due course, during the regular progress of the labours of the Law Commissioner.

I have, &c.
(signed) *J. P. Grant*,
Officiating Secretary.

Indian Law Commission,
11 July 1837.

(No. 276.)

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *J. P. Grant*, Esq. Officiating Secretary to the Government of India, Judicial Department.

Consultations. 16 Sept. 1839. No. 1. (A.)

Sir,

I AM directed by the Honourable the Deputy-governor of Bengal to forward, for the consideration of the Honourable the President in Council, original correspondence, as per margin, with draft of an Act prepared by the Sudder court for the summary decision of disputes regarding valuable crops.

Letter from the Register of the Nizamut Adawlut, dated 7 Sept. 1838, No. 2692, with Enclosures.
Letter to the Register of the Nizamut Adawlut dated 22 Sept. 1838, No. 1866.
Letter from the Register of the Nizamut Adawlut, dated 18 Jan. 1839, No. 152, with Enclosures.

The Deputy-governor does not approve of the principle of the law proposed, and he can see no good reason for having different laws to apply to disputes regarding different crops; but he deems it proper, under the circumstances, to submit the whole subject for the consideration of the Supreme Government.

I have, &c.
(signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

Fort William,
5 February 1839.

(No. 2692.)

From *J. Hawkins*, Esq. Register of the Sudder Nizamut Adawlut, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, in the Judicial Department.

Consultations. 16 Sept. 1839. No. 2.

Sir,

Enclosure. Nizamut Adawlut. Present:—R. H. Rattray and W. Bradon, Esqrs. and Judges; W. Money, Esq. Temporary Judge.

I AM directed to request that you will lay before his Honor the Deputy-governor the accompanying copies of correspondence, as per margin,* on the subject of disputes occurring between indigo planters who cultivate lands held under leases from zemindars or their tenants.

2. The views of the court on the subject are fully stated in the third and fourth paragraphs of their letter to the address of the register of the western court, dated the 3d ultimo, with reference to which they beg to suggest the expediency of declaring, by a legislative enactment, the competency of the magisterial authorities to take summary cognizance of such disputes.

I am, &c.
(signed) *J. Hawkins*,
Register.

Fort William,
7 September 1838.

(No. 69.)

From *B. Golding*, Esq. Session Judge of the Zillah, Jessore, to *J. Hawkins*, Esq. Register of the Sudder Nizamut Adawlut, Fort William.

Sir,

Session Court.

THE Court of Nizamut Adawlut, by their letter to the Commissioner of Circuit for the 13th division, dated 5th August 1831, No. 652, of Construction Books, vol. ii, page 16, have held that magistrates can interfere in cases of indigo disputes only when they may be cognizable under Regulation XV. of 1824, as construed by the court's circular of 17th December 1830; and that in disputes regarding indigo not coming under the provisions of that Regulation, the inquiry must be made under Regulation VI. of 1823.

2. The construction contained in the court's circular above referred to declares that Regulation XV. cannot apply to mere kashtkars or cultivators of the soil, or, in other words, to persons having no property in the soil, but merely disputing about the right to cultivate. In this position are many of the indigo planters, who hold lands on lease, by pottahs or other documents, either from the real proprietors

* From the Session Judge of Jessore, No. 69, 19 July, with Enclosure.
To Register Western Court, No. 2241, 31 August, and Proposed Letter to Session Judge of Jessore.
From Register Western Court, No. 1000, 24 August.

No. VII.
Suppression of Affrays concerning Indigo.

proprietors of the land, or from their under-tenants, which lands they cultivate themselves by means of their factory servants, without making advances to any one for the plant; and it frequently happens that disputes arise between the indigo planter thus holding the lands, and either the proprietor of the land or other persons claiming the right to cultivate, or the plant itself, after it has grown up.

3. The question I wish to ascertain now is, how and in what court are these cases to be investigated, and the right either to cultivate or cut the plant when ready (should it be disputed) to be determined; for Regulation VI. 1823, refers only to persons who have taken advances for indigo, and either evade or neglect to fulfil their contracts; and the planter cultivating himself lands, held as above described, cannot, I presume, sue under that Regulation.

4. An early reply to the above will much oblige, as I have now a case in appeal before me, in which the joint magistrate ordered the planter to be kept in possession, the nature of the case being of the kind above described, which precludes it from being tried under Regulation XV. 1824. The order of the joint magistrate was passed as a miscellaneous one, but being appealed against, cannot, in the absence of any Regulation authorizing it, be upheld, and I am at a loss to know how to direct the joint magistrate to proceed in such cases; and it is very necessary that some definite order should be passed, and some rule laid down, for the guidance of the magistrates in such like cases, or there will be no end to disputes in the Mofussil about indigo plant cultivated as above described, and it will be found very difficult to keep the peace.

5. I am of opinion (the plant itself being the real property in dispute) that in cases when cultivated by the planters themselves, or, as they call it, "neiz jhote," the magistrate might with propriety investigate the claim, by inquiring into who actually cultivated the ground under Regulation XV. and pass an order for its being placed in possession of the party proved to have grown the crops; but this would not meet the question of the right to cultivate, which I think the magistrates might with propriety be also allowed to investigate in summary manner, referring the party dissatisfied with his award to the civil court.

6. It is to be observed, that this system of taking pottahs by planters is of recent occurrence, and, consequently, nothing has been provided for settling the jurisdiction and the manner of investigating into the disputes which may and do arise from the practice; and it is impossible that the police can be expected, with their limited means, to prevent the parties from committing an affray, unless the magistrate is empowered to issue some definite instructions regarding the point of possession.

7. In connexion with the subject of this reference, I have the honour to forward herewith copy of a letter from the joint magistrate, dated the 18th instant, received this morning, and shall be obliged by the court's opinion on the queries put by that officer in the fourth paragraph of his letter.

I have, &c.
(signed) *B. Golding*,
Session Judge.

Zillah, Jessore,
19 July 1838.

From *C. B. Trevor*, Esq. Joint Magistrate of Jessore, to *B. Golding*, Esq. Session Judge, Jessore.

Sir,

I HAVE the honour to request, that, should no objections present themselves, you would forward this communication to the Court of Sudder Nizamut Adawlut, together with any remarks that you may think fit to make.

2. The modes in which indigo planters carry on their operations in this district are, first, the giving advances, in which case the ryot engages to cultivate the ground, and second, the taking of leases when the land is cultivated by the planters' own servants. The system of advances was formerly very generally adopted; since, however, the repeal of Regulation V. of 1830 (which Regulation rendered a ryot not adhering to his contract liable to a criminal prosecution), it has been greatly discontinued, and that of leases, either for a definite or indefinite period (which was a custom comparatively uncommon), has come almost universally into practice.

3. This

No. VII.
Suppression of Affrays concerning Indigo.

3. This preference for the latter system has arisen from the superior claim which the holder of a pottah has always been considered to have over an advance maker, the difference being that one has merely a lien and interest in the plant produced, whereas the other asserts his right to the land itself; and it has been the custom in this magistracy for some time past to hold a summary investigation upon the validity of the pottah or pottahs, as the case may be (though unwarranted expressly by any Regulation), and to give the land (notwithstanding the dissatisfaction of the ryots) into the possession of the person who establishes his claim by lease to the land.

4. As, however, from the decision which in one or two cases of appeal relative to indigo have been given by the session court, your opinion seems to be that a magistrate has not the power of holding proceedings in cases of disputed pottah lands, but can only enjoin darogahs to take care that the peace be not disturbed, I wish much that the opinion of that court be taken on the following points:—

1st. Whether a magistrate or joint magistrate be competent to hold summary investigations into cases in which parties claim lands for sowing indigo on the strength of pottahs (which the ryots deny) or of previous possession, or whether the denial of the pottah by the ryot is to be held conclusive, and the aggrieved party to be referred to the civil court.

2d. Whether, when two parties claim the same ground for sowing indigo, and produce pottahs from two different parties, it is competent for a magistrate or joint magistrate, either by reference to the zemindar or by inquiry into the validity of the documents or previous possession, to adjudge the lands in dispute to the party which satisfactorily proves his right, leaving the other to seek his remedy in the civil court.

3d. Whether, when the plant be ready for cutting, and one or more parties claim the same portion of ground as land held by them on lease, it be competent for the magistrate or joint magistrate to take cognizance of such cases, and to give the plant to the party satisfactorily proving his claim, taking at the same time proper security from him.

5. The court will observe, that by disallowing any power to the Foujdarry court in cases of the nature mentioned in these queries, an evident advantage is given to parties making advances over those holding leases, inasmuch as to these last, no remedy, either for breach of contract in the first instance, or for injury by loss of the crop of indigo, can be had, save by the tedious process of a regular civil suit; and in the meantime the plant goes into the hands of a third party, with whom the ryot has colluded, and eventually, if damages be awarded to the planter, the ryot has not the means of satisfying the decree against him; whereas by Section 5, Regulation VI. of 1823, a planter can proceed summarily against a ryot who has entered into an engagement with him for the cultivation of a particular spot of ground, and who afterwards wishes to evade the fulfilment of that engagement; and by section 3 of the same Regulation, parties claiming plant on the strength of advances can obtain summary decisions on the payment of a proper security.

6. Though fully aware of the frequent forgery of pottah, still the same may be asserted of kubooleeuts. I therefore submit that the cases now under review, taken with all their attendant circumstances, require equal facilities with those provided for by Regulation VI. of 1823.

7. In conclusion, I beg to remark, that unless a summary power be given in these cases, either to the judge or magistrate, the difficulty of preserving the peace of the district will be so great as to amount almost to an impossibility. Several large zemindars and indigo planters are establishing new factories in the neighbourhood of others of long standing; hence the daily chance of collision between different parties. This fact, together with the scanty force of the police, and the distance of many thannahs from the Sudder station, renders it almost unreasonable to expect that, even with the greatest energy (unlesssome definite order be conveyed to them regarding possession), the police officers will in all cases be able to prevent the occurrence of affrays.

I have, &c.

Jessore, Foujdarry Adawlut, 18 July 1838. (signed) *C. B. Trevor*, Joint Magistrate.

(A true copy.)

(signed) *R. Golding*, Session Judge.

No. VII.
Suppression of Affrays concerning Indigo.

(No. 2241.)

From *J. Hawkins*, Esq. Register of the Sudder Nizamut Adawlut, Fort William, to Register Nizamut Adawlut, Western Provinces.

Sir,

Nizamut Adawlut. Present:—R. H. Rattray and W. Braddon, Esqrs. Judges: W. Money and J. R. Hutchinson, Esqrs. Temporary Judges.

I AM directed by the court to transmit to you, for the opinion of the judges of the western court, a copy of a letter (No. 69 of the 19th ult.) from the session judge of Jessore, and its enclosure, inquiring how disputes are to be settled that arise between planters who cultivate lands held under leases from zemindars or ryots, and of the reply which, with the concurrence of the western court, they propose to send to that authority.

2. A further object of this reference is to obtain the opinion of the western court as to the propriety of recommending to the government to take into its consideration the means of providing for the speedy settlement of disputes of the kind alluded to.

3. The provisions of Regulation VI. of 1823, the court observe, are applicable only to the adjustment of claims to crops, for the raising of which advances had been given to the ryots. The extension to British subjects of the right to acquire and to hold lands in their own names, has given rise to a different state of things. Lands are more extensively cultivated immediately by planters, and hence the frequency of disputes between the proprietors of neighbouring factories for the right to cultivate land which each party claims as included within its holding.

4. It is obviously desirable that disputes arising from this source should admit of being summarily settled, so as not to endanger the peace of the places where they occur; and that the magistrate should be empowered, as in other cases of dispute about lands, to decide which party has the best claim. Should the western court concur in this opinion, the point will be submitted to the government.

I am, &c.

Fort William,
3 August 1838.

(signed) *J. Hawkins*, Register.

PROPOSED REPLY.

To Session Judge of Zillah, *Jessore.*

Sir,

THE court, having had before them your letter, No. 69 of the 19th ult., with its enclosure, direct me to observe that you are correct in supposing that the magistrate cannot interfere in disputes between indigo planters regarding crops, except where the parties claim to be proprietors of the land on which the disputed crops are grown, or where advances have been given for raising such crops; planters, therefore, who apply to the magistrate for possession of crops claimed by others, must be referred to the civil court for their remedy.

2. Under the construction of the 17th December 1830, which you allude to, the magistrate clearly cannot decide summarily, agreeably to Regulation XV. of 1824, to whom shall be adjudged crops grown on land held under pottahs from zemindars or ryots. This answer meets the three questions propounded by the joint magistrate in the third paragraph of his letter, the second of those questions being understood to refer to the case of two planters who have taken leases from ryots, each claiming the right of cultivation under pottahs from the same zemindar, and there being no dispute in regard to proprietary rights.

I am, &c.

No. VII.
Suppression of Affrays concerning Indigo.

(No. 1000.)

From *H. B. Harrington*, Esq. Register Sudder Court, Allahabad, to *J. Hawkins*, Esq. Register to the Court of Nizamut Adawlut, Fort William.

Sir,

I AM directed to acknowledge the receipt of your letter (No. 2241), under date the 3d instant, with its enclosures, from the sessions judge of Jessore, and in reply, to state that the answer, which the Calcutta court propose to address to that officer on the points referred by him, appearing consistent with the construction of Regulation XV. of 1824, previously adopted, the court concur in the same.

N. A. N. W. P. Present:— M. H. Turnbull, A. J. Colvin, W. Lambert, W. Monckton, and B. Taylor, Esqrs. Judges.

2. The court also concur with the Calcutta court in the expediency of submitting the present correspondence for the consideration of government, as proposed in the concluding paragraph of your letter.

I have, &c.

(signed) *H. B. Harrington*,
Register.

Allahabad, 24 August 1838.

(True copies.)

(signed) *J. Hawkins*, Register.

(No. 1866.)

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *J. Hawkins*, Esq. Register of the Sudder Nizamut Adawlut.

Sir,

I AM directed by the Honourable the Deputy-governor of Bengal to acknowledge the receipt of your letter, with enclosures (No. 2692), dated the 7th instant, on the subject of disputes occurring between indigo planters who cultivate lands held under leases from zemindars, or other tenants, and to request, in reply, that the court will submit a draft of an enactment to the effect proposed in your second paragraph.

I have, &c.

(signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

Fort William, 22 September 1838.

(No. 152.)

From *J. Hawkins*, Esq. Register of the Sudder Nizamut Adawlut, Fort William, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, in the Judicial Department.

Sir,

IN compliance with the requisition contained in your letter (No. 1866) of the 22d September last, I am directed to forward to you the draft of an Act (prepared in communication with the western court) for investing the magisterial authorities with power to take cognizance of disputes regarding the right to cultivate lands for indigo, &c.

Nizamut Adawlut. Present:—R. H. Rattray, W. Braddon, Esqrs. Judges; J. F. M'Riod, Esq. Officiating Judge.

2. It will be seen that, at the suggestion of the western court (a copy of whose letter is annexed), the intended law has been assimilated to Regulation XV. 1824, so as to include those cases only in which a breach of the peace is to be apprehended, and that its provisions have been extended to the more valuable crops of the country.

No. 1584, 7th ult.

I have, &c.

Fort William, 18 January 1839. (signed) *J. Hawkins*, Register.

No. VII.
Suppression of Affrays concerning Indigo.

DRAFT of an ACT.

BE it enacted, that whenever it shall appear to a magistrate or joint magistrate, from the report of a police officer, or from any proceedings in the Foujdarry court, that disputes likely, in the opinion of the magistrate, to terminate in a breach of the peace, unless speedily adjusted, exist regarding the right to cultivate lands with indigo, coffee, cotton, or mulberry, or to cut crops the produce of such lands, on the ground that the latter are held under pottahs or leases granted by the proprietor or one or more of his tenants, it shall be competent to the magistrate to investigate the same and pass a summary decision, awarding possession of the land or crops to the party who shall appear to be best entitled to it, leaving to other party to seek his remedy by a regular suit in the civil court, in the same manner as in cases falling within the provisions of Regulation XV. 1824.

2. And be it enacted, that the summary decisions passed under this Act shall be appealable to the sessions judge, whose decision shall be final.

(No. 1584.)

From *H. B. Harrington*, Esq. Register to the Sudder Court of Allahabad, to *J. Hawkins*, Esq. Register to the Court of Nizamut Adawlut, Fort William.

Sir,

N. A. N. W. P. Present:—M. H. Turnbull, W. Monckton, and B. Taylor, Esqrs. Judges.

I AM directed by the court to acknowledge the receipt of your letter (No. 3294), under date the 23d ultimo, forwarding copies of the correspondence which has taken place between the Calcutta court and the government of Bengal, together with the draft of an Act empowering the magistrates to take summary cognizance of disputes regarding the right to cultivate lands for indigo under pottahs or leases, or to cut the crop thereon.

2. In reply, the court direct me to state that they are of opinion the operation of the proposed law should be restricted to disputes likely, in the opinion of the magistrate, to terminate in a breach of the peace, unless speedily adjusted, in the same manner as cases falling within the provisions of Regulation XV. of 1824.

3. It also appears to the court deserving of consideration whether, instead of confining the law to indigo crops, for which there does not appear to be any sufficient reason, it might not be beneficially extended to all other crops, or at least the more valuable ones, such as coffee, sugar, and cotton, and they would suggest its extension accordingly.

I have, &c.
(signed) *H. B. Harrington*, Register.

Allahabad, 7 December 1838.

(True copy.)
(signed) *J. Hawkins*, Register.

Consultations. 16 Sept. 1839. No. 3.

MINUTE by the Honourable *T. C. Robertson*, Esq., dated 16th February 1839.

THIS is an important reference, and not lightly to be disposed of. The necessity for a more summary adjudication of disputes than can be obtained from the civil courts has gradually extorted many extensions of power to the magistrates.

Regulation VI. of 1823 empowers a magistrate to grant summary redress to a planter injured by the evasion of a contracting ryot.

Regulation XV. of 1824 armed the magistrate with power to pass a summary judgment on disputes regarding the proprietary right to any particular parcels of land.

Regulation V. of 1830 made evasion of his contract by a ryot penal.

The repeal of this last law, and the extension to Europeans of the right to hold lands, produces the necessity for some enactment, to prevent those disgraceful collisions to which the more frequent settlement of our countrymen in the interior is otherwise likely to give rise.

For these reasons, I rather incline to the proposed Act; the objection that it does not go far enough, is rather specious than sound. One great object of the Act is to save our national character from reproach.

Europeans as yet do not sow rice.

(signed) *T. C. Robertson.*

No. VII.

NOTE by Mr. *F. Millett.*—(Not dated.)

Consultations. 16 Sept. 1839. No. 4.

By these sections it was provided that a proprietor or farmer of land, or dependent talookdar, or under-farmer, or ryot, or other person having a claim to any disputed land or crops in the possession of another, should not possess or attempt to possess himself of the land or crops by force, but should prefer his claim to the civil court; and that if any such claimant did forcibly take possession of the disputed land or crops, the party dispossessed might complain to the civil judge, who was directed to take immediate cognizance of the complaint, and upon the previous possession of the complainant being proved to his satisfaction, and without inquiring into the merits of the claim of the dispossessor, to cause the disputed land or crops to be restored to the complainant, or the value of the crops to be paid to him, if they had been damaged, destroyed or were not forthcoming, and to award against the offender such costs and damages as might appear equitable, leaving him to prefer his claim to the property in dispute to the civil court.

Sects. 2 & 3, Reg. XLIX. 1793. Sects. 2 & 3, Reg. XXXII. 1803.

The above Rules were extended to Benares by Regulation XIV. 1795, and to all disputes in that province between zemindars, talookdars, putteedars, whether distinct or common, or other proprietors of land, or under-farmers, or ryots, or other persons, regarding tanks or reservoirs, wells or watercourses.

Constructions of the Sud. Court, No. 28, 1806. No. 39, 1803.

Complaints of violent dispossession from fisheries, tanks, &c. should be taken up under Regulation XLIX. 1793, according to the spirit of it.

The provisions of the Regulation are applicable only to cases of dispossession by force, amounting to a breach of the peace, and the fact of forcible dispossession is the only subject of the summary inquiry authorized by it, all matters of right being cognizable in the regular manner.*

* By regular suit.

No. 42, 1803.

Under Section 15, Regulation VII. 1799, as well as upon general principles of justice, a defaulting farmer is liable to be ousted from his farm at the end of the year, for which an arrear of rent may be due from him, if he shall not discharge the same on demand. He may oust without application to the courts, as declared by c. 7 of the above section, provided no violence be used so as to bring the case within the provisions of Regulation XLIX. 1793.

No. 158, 1814.

If a plaintiff's lease expire before the summary action for possession and damages is determined, though it may not be requisite or proper to adjudge possession to the plaintiff, equitable damages, equal to the loss sustained by the plaintiff during the period of his lease, should be adjudged.

Cl. 1, Sec. 5, Reg. VI. 1813.

It was supposed disadvantageous to become the plaintiff under Section 3, Regulation XLIX. 1793; and disputes consequently, instead of being brought before the courts for adjustment, frequently continued till they ended in a breach of the peace.

This section, therefore, empowered the civil court, when advised by the criminal court that disputes existed concerning any lands or premises likely to terminate in a breach of the peace, to call on the parties to deliver a written statement of their possession, and adduce proof of their having been forcibly dispossessed or disturbed in their possession by the adverse party, and after an investigation of the statements and evidence of both parties, to decide the case in the same manner as if it had been brought on by a complaint in the ordinary mode.

Cl. 2.

In all such cases of forcible dispossession and disturbance of possession, but more especially in cases of disputes respecting the boundaries of estates and premises, and the right to water for the purposes of irrigation, the civil court was to endeavour to prevail on the parties to settle the dispute, either on the question of possession or of right, by reference to arbitrators.

Cl. 3.

But whereas, on complaints for forcible dispossession from land, and forcible disturbance of the possession thereof, it occasionally happened that after due investigation the fact of possession could not be ascertained, this clause authorized the court in such cases to attach the disputed lands, and to appoint a person to manage them, by collecting the rents, discharging any public demands on them, and paying the profits into court, after paying all necessary expenses. But the courts were enjoined not to resort to this measure except

No. VII. Suppression of Affrays concerning Indigo.

when found indispensable after a careful inquiry into the possession of the parties.

But this attachment was not to exempt the lands from the usual responsibility for payment of the public revenue.

Construction of the Court, No. 140, 1813, cl. 3.

If the parties do not attend within reasonable time after summons, so as to admit of the requisite investigation being made, and the attachment of the land in dispute appear necessary for preventing a breach of the peace, attachment may take place.

Construction, 769, 1833. A magistrate, under Sect. 2, Reg. III. 1821, may try appeals from assistant specially empowered to try any suits of dispossession.

Construction, No. 521, 1829, sec. 3, of this Regulation*, not meant to rescind the rule in Sec. 5, Reg. III. 1821. The appeal admissible, though more than 30 days expired, if it be proved that the petitioner was prevented by circumstances totally beyond his control from presenting his petition within the prescribed period.

See the whole Regulation rescinding Sec. 6 of Regulation XV. 1824, and making the orders and decisions of the magistrates and joint magistrates appealable to the Commissioner of circuit.

ACT VII., 1835.

Constructions of the Sudder Court, No. 396, 1825.

THE point of relevancy, or otherwise, is best established by the evidence adduced, to prove the complaint of dispossession.

No. 414, 1826.

The authority to cause an attachment is not expressly recognised by Regulation XV. 1824, to vest in the criminal courts, but it may be presumed to exist with analogy to the rule contained in Cl. 3, Sec. 5, Regulation VI. 1813.

No. 525, 1829.

(But the Commissioner of circuit cannot order an attachment.)

No. 415, 1826; No. 640, 1831; No. 689, 1832; nor even for Report, Cl. 6, S. 18, Reg. V. 1831, being intended for criminal cases.

Cases under Regulation XV. 1824, not referrible to a sudder ameen.

No. 434, 1826.

The violent entry of a house is a case of dispossession within Regulation XV. 1824.

No. 448, 1827.

Regulation XV. 1824, was never intended to apply to mere kashtkars, or cultivators of the soil; and (if applicable) in this particular case decision should have been given in favour of the plaintiffs, their possession having been more recent than that of the defendants, and having been acquiesced in by the defendants, without complaint to the court, for some considerable time previous to the occurrence of the present dispute.

No. 453.

The Regulation would be applicable, whatever may be the nature of the property in dispute, but its provisions do not apply to mere kashtkars, or cultivators of the soil, or, in other words, to persons having no right of property in the soil, but merely disputing about the right to cultivate.

No. 475, 1828.

With reference to your† remark, that if without distraint of property an ejectment has actually taken place, in consequence of the ryot being compelled to quit by force or intimidation, and his former possession shall be disputed and denied by the zemindar, you cannot discern to whom the investigation of such a case would belong, the court are of opinion that either the rules of Regulation XLIX. 1793, or those of Regulation VIII. 1819, would be applicable; the former where the dispossession may have been effected by force, and the latter where these means may not have been resorted to.

The declaration contained in Cl. 5, Sec. 18, Regulation VIII. 1819, that it is illegal to oust or disturb resident cultivators, unless under certain stated circumstances, necessarily implies a remedy in case of the contravention of such rule; and the court are of opinion that, in the spirit of the enactment cited, such remedy should be afforded by the judge, on the summary application of the ejected ryot, by an order for his being restored to possession, and his retaining it until the process prescribed by the Regulation shall have been observed.

No. 482, 1828.

The Regulation has been held not applicable to disputes relative to the right of cultivation only; and the court are of opinion that all differences between landholders and their tenants or ryots, involving the question whether the landholder

* Regulation XV. 1824; Regulation II. 1829.

† *i. e.* The Zillah judge, to whom this construction was addressed.

holder can legally oust the tenant or ryot from the lands which the latter considers himself entitled to occupy, should come under the provisions of Regulation XLIX. 1793, or Regulation VIII. 1819.

In reply to question whether the magistrates can award costs to parties suing agreeably to this Regulation, No. 505, 1829.

The criminal courts may, under Sect. 8, Regulation XIV. 1797, adjudge a reimbursement of costs actually incurred upon any prosecution before them, by either of the parties thereto, in particular cases, wherein they consider such reimbursement just and equitable.

Suits for dispossession, to which thicadars* are a party, can only be tried under Regulation XLIX. 1793. No. 546, 1830.
* Farmers.

The supposed case of dispute between ryots, not cognizable under this Regulation. No. 547, 1830.

In reply to the query whether disputes for personal property can be investigated under this Regulation, refer to the preamble of it.

The provisions of the Regulation are only applicable to disputes between persons claiming a proprietary right in the land, or their agents (gomastahs, naibs, &c.). No. 561, 1830.

In disputes regarding land, if the proprietors of the lands are themselves engaged in the dispute, the case is cognizable under Regulation XV. 1824, and not otherwise; but in the case of a mere farmer, if any one dispossess him, or interfere with his rights, that Regulation does not apply, and the farmer must be referred to a summary suit under Regulation XLIX. 1793, for recovery of possession, or to a summary suit for the rent of the lands of which the acts of his opponents have deprived him. No. 568, 1830.

A magistrate has no power under Regulation XV. 1824, to receive arbitration bonds, or confirm or execute awards for the final decision of all matters at issue between the parties. The magistrate's interference under that Regulation is restricted to cases wherein he has reasonable ground to apprehend disturbances; and after he has interfered, his power extends no farther than, after due inquiry, to award that the actual possessor retain possession of the disputed property. No. 571, 1830.

If at any time after a case of dispute has been brought into the magistrate's court, under this Regulation, the parties should wish to refer their respective claims to the decision of arbitrators, they are at liberty to do so; and upon their representing to the magistrate that they have agreed to an adjustment of their dispute in that manner, and satisfying him that there is no further ground to apprehend a breach of the peace, the magistrate should stay all further proceedings in the case.

The parties would then be at liberty to refer their dispute to private arbitration, under Sect. 3, Regulation VI. 1813, and the award, whatever it might be, would be enforced by the civil court, under clause 2 of the same section and Regulation, upon application being made to it by either party within the time prescribed.

See this construction. No. 579, 17 Dec. 1830; Cons. 7 Jan. 1831; No. 75, vol. 2.

The term vakeel, in section 3, means any agent of the parties, duly appointed to act as their vakeels; the amount of their fees should be adjusted between them and their constituents, as in other Foujdaree cases. No. 371.

Though the provisions of the Regulation prohibit a magistrate to award damages for loss of crops, or injuries sustained from dispossession, they do not preclude him from restoring a party wrongfully dispossessed to the possession of land with the crop upon it, although the latter may have been sown by the wrongful dispossessor, as in the case stated. No. 378, 1825.

A dispute between a zemindar and his moostagir, or farmer, not cognizable under this Regulation. A jaidadee tuccanpook, on possession of a moostagir, does not render the case of a quarrel between him and his zemindar cognizable under it. No. 633, 1831.

No. VII.
Suppression of Affrays concerning Indigo.

If a dispute between a lumbardar and shikmee sharer regards a defined portion of land, the exclusive possession of which is claimed in proprietary right by each party, it is cognizable; but not so if the dispute is merely about the extent of the interest in the joint estate which each party claimed.

No. 652, 1831.
No. 661, 1831.

The magistrate can interfere in cases of indigo disputes only when they may be cognizable under Regulation XV. 1824, as construed by court, C. O. 27 December 1830, in which case he may depute his assistant, under Regulation XI. 1824; but in disputes regarding indigo, not within that Regulation, the inquiry must be made, and final decision passed by the civil court, under Regulation VI. 1823.

No. 374, 1832.

Paragraph 7, C. O. 17 December 1830, expressly authorizes the magistrate to determine boundaries, under Regulation XV. 1824, *i. e. pro tempore.* The magistrate will merely define the boundary of that which was in the possession of the party ousted before the dispute arose, leaving the question of right to be determined by the civil court.

Construction, 855, 1834.

As complaints of violent dispossession from fisheries, tanks, &c. may be taken up under Regulation XLIX. 1793 (Construction No. 28), they are consequently cognizable under Regulation XV. 1824.

Construction 875, 1834.

Regulation VI. 1813, section 5, modified and superseded by Section 2, Regulation XV. 1824.

The circumstance of the proprietor of the land not being a party to the suit is immaterial, as under paragraph 6, C. O. 7 January 1831, the joint magistrate might have made him a party by issuing the perwannah prescribed in Section 3, Regulation XV. 1824.

Construction 886, 1834.

Commissioner of circuit may order a magistrate to take up a case under this Regulation, though magistrate may not think it necessary for the preservation of the peace.

Construction, No. 894, 1834, see Reference to C. O. S. D. A. 15 Nov. 1833, No. 100, p. 92.

Regulation XLIX. 1793, still unrescinded, for cases of forcible dispossession.

No. 1006, 1836.

Regulation XV. 1824, applicable to cases of disputed possession between mortgagers and mortgagees, whenever such disputes may appear to the magistrate likely to terminate in a breach of the peace.

No. 1029, 1836.

If neither of the parties in a suit brought into the magistrate's court, under Regulation XV. 1824, will appear, and produce their evidence and proofs, the magistrate should strike the case off the file, taking such measures as may appear necessary to prevent a breach of the peace, extending even to the attachment of the property in dispute, if deemed necessary to secure such prevention.

Reg. VII. 1822, Sec. 34.

Regulation IV. 1828, and Sect. 4, Regulation IX. 1833.

Construction 113, in Clause 7, Section 15, Regulation VII. 1799.

Regulation XLIX. 1793, and the above clause, compared, S. D. A. vol. i. page 207.

INDIGO REGULATIONS.

Regulation XXXIII. 1795, Benares.
— VI. 1823.
— V. 1830.

Act XVI. 1835.
Act X. 1836.

No. VII.
Suppression of Affrays concerning Indigo.

Extract from Old Notes.

Section 5, Regulation XV. 1824.

I think it would be well to explain the terms "right to possession," in this section. I know they have been construed by some authorities to mean that the cause must be decided on the original right to the property, in opposition to the principle laid down in Regulation XLIX. 1793; whereas the intention of Regulation XV. 1824, appears to me to have been simply to change the tribunal before which the summary investigations were to be made, in consequence of the offices of judge and magistrate being held in some districts by different persons, and not to make any alteration in the principle on which the investigations and decisions are to be made.

In fact, unless the principles of Regulation XLIX. 1793, and Clause 3, Sec. 5, Regulation VI. 1813, are maintained, the summary process of Regulation XV. 1824, will tend rather to encourage violence than to repress it; for a claimant who really had the right of property on his side, would have a very powerful inducement to eject his adversary by force, or at all events to threaten to do so, knowing that if a summary proceeding ensued, his right would be recognised, and judgment would pass in his favour.

The inducement might not be sufficient to bring about a serious affray, because the fear of severe punishment would operate in a contrary direction; though even in such cases possession of the disputed land would be a set-off against the penalty incurred; but it might lead to minor breaches of the peace, and the claimant would in many such cases consider his possession as more than compensating for the inconvenience of a fine, or short imprisonment.

The only circumstance under which a summary decision on the point of right could be justifiable, is such as is described in Clause 3, Sect. 5, Regulation VI. 1813.

Land, premises, orchards, pasture grounds, fisheries, wells, watercourses, tanks, reservoirs, or the like. The rents, produce, or profits of such lands, premises, &c.

Minute by the Honourable *A. Amos*, Esq., dated the 16th September 1839.

Consultations. 16 Sept. 1839. No. 5.

A complete historical detail of the law, and decisions upon the subject of dispossession, has been furnished by Mr. Millett. It appears to me that the objects we have in view may be accomplished by a very short Act. These objects are,

1. We want to counteract any forcible dispossession when committed by a British subject.

2. We want to apply the remedy in favour of the person actually in possession, whether he have any kind or no kind of title, and whoever the dispossessor may be. Thus we avoid the construction of the Sudder court, that relief from dispossession can only be afforded where the dispossessor or person dispossessed, or one of them, is proprietor, and not a mere ryot.

3. We want to obviate all doubt that a magistrate can give the required relief, and that the aid of a judge is not necessary.

It may be said, 1. That the magistrate will be puzzled to find out which of two parties was in actual possession, and was afterwards dispossessed forcibly by the other.

2. That some power should be given to the magistrate to anticipate a dispossession.

3. That the magistrate cannot determine whether the party dispossessed may have no right whatever to remain on the land.

As to which it may be said, 1. The magistrate sees who is in possession at the time of inquiry; and I should think he ought to be able to form a reasonable conjecture how and when he got in. It must be clear that there has been a fight for the possession, in which he succeeded, and the time of the conflict will probably be ascertained. The only remaining question is, whether the party continuing in possession was in peaceable possession before the time of the conflict. Whether this be easy to ascertain in all cases or not, much is gained by allowing

No. VII.
Suppression of Affrays concerning Indigo.

the magistrate forcibly to repossess in those cases, be they few or more, in which he is satisfied that there has been a forcible dispossession.

2. The magistrate, under his general powers, may take steps to prevent a breach of the peace; and if he is not to determine the right to possession, he can have nothing to decide before the breach of the peace is committed. If a party in possession apprehends a forcible attack, he may easily draw the attention of the magistrate or his officers to the fact of his actual possession, the only fact upon which any difficulty can occur in the way of his recovering possession.

3. It is no doubt an inconvenience arising from the Act that it may encourage persons who have no pretence of right to remain upon the land to drive the person clearly entitled to the right of possession to the expense and delay of a regular suit. But for this law, it may be said, the wrongful occupant would most probably move off the land without compelling the person entitled to possession to use force. The answer, perhaps, is, that such a consequence of the law is counterbalanced by putting an end to the violent conflicts which now constantly arise out of boundary disputes, or other disputed claims to land, in which injustice triumphs as often as right, and which, without reference to the merits of claimants, ought at all events to be put down.

I have added to the papers various papers which I received a considerable time ago, respecting assaults and forcible injuries committed by Europeans in the interior.

(signed) *A. Amos.*

ACT —— of 1839.

Consultations. 16 Sept. 1839. No. 6. Enclosure.

It is hereby enacted, that if any person within the presidency of Fort William in Bengal shall be forcibly dispossessed of any land, premises, trees, fisheries, wells, watercourses, tanks, reservoirs, orchards or crops, or other profits of land, (whether such person be a proprietor or farmer of land, or a dependent talookdar, or an under-farmer, or a ryot, or other party in actual possession,) it shall be lawful for any magistrate, without inquiring into the right of possession, or any merits of the claim of the dispossessor, to cause the property to be restored to the person so dispossessed, leaving him to prefer his claim to the property in dispute by a regular suit: provided always that this Act shall not extend to any such property as aforesaid, whereof any person may be so dispossessed as aforesaid, situate, lying or being within the jurisdiction of Her Majesty's Supreme Court at Calcutta.

NOTE by Mr. Officiating Secretary *Grant* (no date).

Consultations. 16 Sept. 1839. No. 7.

1. I have the honour, by direction of the Honourable Mr. Amos, respectfully to submit the following note and Draft Acts, prepared in the hope of facilitating the consideration by the members of government of several points arising out of the papers noted in the margin*.

2. The single object of Regulation XV. of 1824, is to keep the peace, as shown in its preamble; when there is no real belief that a dispute is likely to end in a breach of the peace, no proceedings can be instituted under that Regulation, except by an abuse of it on the part of the magistrate.

3. The Sudder have ruled that Regulation XV. of 1824 can only be applied when a proprietor of land is a party to the dispute. As the peace is broken equally by a battle between farmers and ryots as by one between zemindars, this construction very naturally is found to render the Regulation useless in many cases. The local officers in indigo districts find breaches of the peace of a very serious character often to arise from disputes between the farmer and other farmers, between the farmer, a person pretending to be a farmer, and ryots or other persons not proprietors, about the possession of fields or crops on land farmed by indigo planters under lease from the zemindar. They therefore apply for a law to render Regulation XV. of 1814 applicable to such cases.

4. The

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* From Secretary to the Government of Bengal, dated 5 Feb. 1839, with enclosures.
Note by Mr. Officiating Secretary Millett, not dated.
Minute by the Hon. A. Amos, Esq. dated 16 March 1839.
Draft of Act proposed by the Hon. Mr. Amos.

No. VII.
Suppression of Affrays concerning Indigo.

4. The only reason that I see why that Regulation does not apply to such cases, is the above construction of the Sudder. It has been thought that there is another reason, which is an omission in section 3 of the Regulation, which mentions only "lands or premises, or the right to water for purposes of irrigation;" whereas the preamble mentions "lands, crops, wells, watercourses and other premises;" and section 2 mentions "land and other property." But I humbly conceive that this reason does not exist; because, 1st, the words of the preamble are large enough, and they show the intent of the Regulation very plainly. Wherefore it would seem that "land" in section 3, must be intended to include crops and profits of land. 2dly. The enacting part is merely a modification of Regulation XLIX. of 1793, in which the words used are "land or crops," and those words having been construed to include "fisheries, &c."* are large enough. 3d. The object of the Regulation is to anticipate common cases of affray, and crops are amongst the common causes of such affrays. This view seems proved to be right by two constructions of the Sudder† at least. Such is the view now actually enforced by authority, and therefore upon this point legislation seems unnecessary.

5. If, therefore, the constructions‡ of the Sudder, confining the Regulation to proprietors, could be got over, the object would, as it strikes me, be gained. This might be done, 1st, by a law enacting that the Regulation shall apply to disputes between any persons about the sort of property mentioned, if likely to end in a breach of the peace; or, 2dly, by a law declaratory to the same effect; or, 3dly, by a formal reversal by the judges of the past constructions of the court.

6. The construction, which is the cause of all the difficulty, has been a matter of surprise to competent persons; Regulation XLIX. of 1793 expressly mentions "proprietors, farmers, dependent talookdars, under-farmers, ryots, or other persons. Regulation XV. of 1824 professes to be a mere adjunct, in modification of the former Regulation. The object of both Regulations is the same as stated in the preambles of both, viz. to prevent a certain class of affrays. The latter Regulation has this further object specified, and no other further object, viz. to divert the cases cognizable under the former Regulation by the judge only into the court of the magistrate. There is not a single word traceable in Regulation XV. of 1824, from which the restricted intention imputed to its authors can be inferred. The word "crops" is oddly mentioned in the preamble, if the Regulation does not apply to ryots, the only class of persons to whom "crops" usually belong. If such be construed as the intention, it must be assumed that the authors of the Regulation fell short of their avowed object (the preservation of the peace amongst the agricultural community) in a most unaccountable and even ridiculous manner. The reasons given in the court's first construction to this effect seem, if applicable at all, equally applicable to Regulation XLIX. of 1793, yet it is admitted by other constructions that those reasons do not apply to that last-mentioned Regulation.

7. From some expressions in the papers before government, I am myself inclined to think that the present judges are doubtful of the propriety of the construction, and only follow it because it has been laid down. The court are not debarred, as far as I am aware, from reconsidering and reversing a construction. If the legislative council applies for the decision of the present judges on this point, with reference to the necessity of making a law, and the character of any law to be made, I imagine the judges must consider the point, and decide it, and give the grounds of their decision; and there is always a chance of their deciding so as to obviate the necessity of a law.

8. But there are arguments of weight in favour of a new enacting law, which shall embrace this point, with others. And if any new law be passed, it will be needless

* Construction, No. 28, 1806.

† Construction, No. 453, 1827, the Regulation applicable, whatever the nature of the property in dispute. Construction, No. 855, 1824, to fisheries, &c. as Regulation XLIX. of 1793.

‡ Construction, No. 448, 1829, Regulation XV. of 1824, was never intended to apply to mere cultivators. Construction, No. 453, 1837, nor to persons having no right of property in the soil. Construction, No. 482, 1828, nor to disputes between landlord and tenant, or ryot. Construction, No. 546, 1830, nor to suits in which theckadars (farmers) are parties. Construction, No. 561, 1830, Regulation includes disputes in which persons claiming to be proprietors, or their agents, are parties. Construction, No. 568, 1830, not otherwise. Construction, Nos. 652 & 661, of 1831, indigo disputes included in the above constructions.

No. VII.
Suppression of Affrays concerning Indigo.

needless to trouble the Sudder about this construction. These arguments depend on the expediency of legislating on new points, which cannot be reached by any mere settlement of the force of the present law, Regulation XV. of 1824.

9. The chief of these points requiring new legislation, seems to be to determine the amenability of British-born subjects, in the cases provided for by Regulation XV. of 1824, to the magistrate's authority, given by that Regulation. The principal inconvenience complained of, to remedy which a law is asked for, arises in the case of Indigo planters, mostly British-born subjects. If Regulation XV. of 1824 clearly does not apply to British-born subjects, no mere explanation or construction of the doubtful provisions of that Regulation will do what is required. Now the question is, if *A.*, a British subject, unlawfully dispossesses a landholder, native or British born, can a magistrate, under the existing Regulation (which is not registered in the Supreme Court), turn *A.* out and restore the former possessor? The opinion seems to be that the magistrate could not. Possibly an argument *contra* might be raised, but even in that case the point, it will be admitted, would be at least doubtful; so that in any case a law would seem requisite, specially determining the question in the affirmative.

10. It seems to be the opinion that the Acts of the government of India, passed since the last Charter Act, which give any power to any officer, without specifying the classes over whom he is to possess it, have given him power in those cases over all classes of persons, including British-born subjects, within that officer's local jurisdiction. According to that opinion, an Act rescinding Regulation XV. of 1824, and re-enacting its intent, free from the possibility of misconstruction without special allusion to British-born subjects, would do all that is required.

11. This raises a very important point, which, as a general question, I respectfully submit for the consideration of the members of government.

12. It is not now generally known that the penal Acts in force in the Mofussil, passed since the constitution of the government of India, do apply to British-born subjects. The British-born inhabitants certainly do not know it, nor, I believe, do the magistrates know it. It can hardly be right to go on legislating with a hidden meaning; therefore it would seem right to call attention generally to the circumstance. But deliberation beforehand may not be amiss, as the announcement will be startling, and may excite a sensation.

13. At any rate, in regard to this Act, either the Act must specially be made applicable to British-born subjects, or magistrates must be specially brought to see that it will apply to them without special mention, or the object which the government has in passing it will practically be missed.

14. I think when an occasion first arises, it may be expected that a question may be raised on the point whether the Acts affecting only the Mofussil do apply to British-born subjects when not specially mentioned. Did the members of the legislative council, when that council began to legislate, know that they were legislating for British-born subjects in the Mofussil by every Mofussil Act, and intend to do so? The question, however, certainly will not be what they knew or really meant, but what they did, and what their meaning was as deducible from the laws they passed. Perhaps there are arguments leading to a legitimate doubt, whether the Acts generally do apply to British-born subjects in the Mofussil. To put British-born subjects for the first time under the ordinary jurisdiction of Mofussil magistrates, *sub silentio*, would be a strange under-hand way of making so important a change in the law of jurisdictions. A catalogue, No. 1, of offences committed by British-born subjects, and cognizable by the Mofussil authorities, under this view of the Acts, contrasted with a similar catalogue, No. 2, of offences not so cognizable, would exhibit a droll state of the law of jurisdictions. There are some special provisions for British-born subjects in the interior which were considered so obviously necessary on opening the interior to such persons, that the Charter Act specially directed the Indian legislature to pass them; now as yet, none of these special provisions have been made, doubtless for good and sufficient reasons of a general character. But when even in these special points it has not been thought fit yet to make British-born subjects liable to magisterial authority in the interior, it would seem inconsistent legislation to make them so specially liable for the very miscellaneous offences that would fall into catalogue, No. 1, as above described. It might be maintained that British-born subjects have not yet been placed within the jurisdiction of Mofussil magistrates; that the original jurisdiction of such magistrates was not

local,

No. VII.
Suppression of Affrays concerning Indigo.

local, in so far as such subjects were concerned, because the Regulations originally determining the jurisdiction of Mofussil magistrates did not and could not give them local jurisdiction over such subjects; and that as no Act of the government of India has placed such subjects within their local jurisdiction, such subjects remain without their jurisdiction altogether. This argument might be advanced, admitting that an Act rendered penal by an enactment of the legislative council is penal, if done by a British-born subject in the Mofussil; for it would contend that for such an Act, though penal, he could only be tried by a court, under whose jurisdiction he has been placed by some law binding on him. And it may be remembered that the courts who will determine the question of jurisdiction, will lean against a construction which, besides relating to a penal law, may take from British-born subjects trial by jury.

15. It will not escape attention that any specific provision including British-born subjects in this Act, might tell against the applicability of other Mofussil Acts to that class.

16. Supposing a new law to be determined on, with reference to the necessity of including British-born subjects, the opportunity of amending the law with reference to other points may be taken.

17. One of these relates to thewording of the present law (Sec. 5, Regulation XV. of 1824), which says that the "right to possession" shall be determined summarily by the magistrate. This expression has sometimes been construed so largely as to be equivalent to the right of property, and thus to include the whole merits of the dispute. It will be seen that the proposition of the Sudder contained in the Draft Act now submitted is to give the magistrate authority to "award" possession "to the party who shall appear to be best entitled to it." This would make these cases civil suits, to all intents and purposes; and what advantage is gained by transferring any civil suit from a civil to a criminal court, I do not know. There can be no doubt that Regulation XV. of 1824 was not meant to vary the substantive law of Regulation XLIX. of 1793, and that it was meant only to authorize inquiry into the fact of possession immediately before the dispute in question arose; I understand that the intention of the council is to do no more than this. There is a construction * of the Sudder restricting the meaning of the term "right to possession" in Regulation XV. of 1824, which, I presume, guides the present practice; so no new law would be necessary for this point only; though if a new law becomes necessary otherwise, it might be worded more precisely.

18. If a new law is made, it may be determined whether or not in cases of unauthorized dispossession, the necessity for there being a likelihood of a breach of the peace, in order to authorize a magistrate in restoring possession, may be removed; objections to such a law, as making too extensive a change in the existing law, may perhaps be weakened by a consideration of what, I make bold to say, is at present no uncommon practice, which practice is to assume the likelihood of a breach of the peace, by a legal fiction, whenever the magistrate inclines to take up the case, and often to make no pretence even of the likelihood of a breach of the peace. Such an authority seems not unreasonably given to the magistrate; for forcible dispossession without authority of law seems as fit a reason for magisterial interference, when the property in question is real, as when it is personal.

19. This summary power is no more than is given to the revenue authorities at Bombay, who are also always magisterial authorities, by Clause 2, Sect. 1, Act No. XVI. of 1838. In that Act the time for calling for such interference is limited to six months from the dispossession. By Sec. 5, Regulation II. of 1805, of the Bengal Code, the limit for these summary suits when taken before the civil court is three months from the dispossession, unless good cause of prevention be shown; perhaps one month would be ample, considering the true object of the law. It seems clear that some short limitation is desirable. In the draft prepared, I have followed the law of 1805.

20. It is true that parties dispossessed have now a summary remedy in the civil courts by Regulation XLIX. of 1793. But I think it probable that it would be

* No. 571, 1830, a magistrate can only award that the actual possessor retain possession of the disputed property.

No. VII.
Suppression of Affrays concerning Indigo.

be found on inquiry that parties do not often avail themselves of this law, and if so, the reason may be that the magistrates' court is found far more speedy and effectual. I have already said, that I believe those courts go beyond the law by receiving all such suits, without much regard to the real likelihood of a breach of the peace. Perhaps, if a reference is made to the Sudder, the judges might be asked if such a provision would be objectionable.

21. I would suggest whether the law would not be improved by adding disputes about the right of use; this would include, more certainly, tanks, ghats, roads, &c., public, or alleged to be public, property, of which, if public, there can be no possession or right to possession.

22. The Honourable Mr. Amos has particularly directed my attention to the authority to interfere, given by the present law to magistrates, in cases of threatened dispossession. It will naturally strike one, that the ordinary powers of the police will prevent or stop an actual affray, and that where no dispossession has been effected, and no affray actually occurred, there is no ground for magisterial interference; also that in such cases, interference, unless it goes to the improper length of deciding on the right of possession, that is to say, the merits of the case, will be of no use. But I think practical men would universally be opposed to a change of the law which should preclude interference in cases of threatened dispossession, and, as it appears to me, with great reason.

23. Certainly magisterial interference in threat of dispossession should only be allowed in cases of *bonâ fide* likelihood of a breach of the peace, as is now the law; but in such cases I think the special power of declaring possession to be in *A.* or *B.* or *C.* very beneficial, over and above the mere general power of dispersing a riotous assembly, or punishing actual breach of the peace. The real use of such a special preventive power, I believe to be confined to cases where the fact of possession is really doubtful; where no party has exclusive possession, or where the authorities cannot discover who has. The decision requisite is not I think, even in the most doubtful cases, precisely a decision as to the right of possession (though that consideration, as an evidence of the fact of possession, may have weight sometimes); but it is merely a decision as to the fact of possession, the effect of which is to settle that fact, before unknown. After such a decision, if there is an affray, you know which party is in the wrong, consequently there are few affrays after such a decision; before such a decision you cannot say who is right and who is wrong, consequently both parties are punished for an affray, one with unjust severity, and one with unjust leniency; or where both believed they had possession, both are punished with great severity, and yet affrays are numerous before such a decision.

24. The thannadar writes to the magistrate that 200 people are collecting on the part of *A.* and *B.*, to fight about a piece of land; the police may or may not be able to prevent an actual affray. As soon as the darogah's back is turned, they assemble again. Is it not beneficial that the magistrate should have the power of summoning both parties, and inquiring into the fact of possession, and saying that *A.* or *B.* is in actual possession, and that the other party must go to a regular suit, and so removing at once the *origo mali.* It was this very point which occasioned the modification by Sect. 5, Regulation VI. 1813, of the old law of Regulation XLIX. of 1793, by which summary suits could not be had in cases only of threatened dispossession.

25. The real use of the law I take to be the decision of the fact of possession, which, in India, is often the most difficult of all points to ascertain. To provide for cases where the fact of possession cannot be determined on a summary inquiry, I would suggest that the power of attaching the disputed land, as given to the judge by Clause 3, Section 5, Regulation VI. of 1813, be given to the magistrate by the new law.

26. As directed, I append for the consideration of the members of government a draft of an Act prepared with reference to the above remarks.

(signed) *J. P. Grant,*
Officiating Secretary to the Government of India.

No. VII.
Suppression of Affrays concerning Indigo.

Proposed ACT.

1. It is hereby enacted, that Regulation XV. of 1824 of the Bengal Code be repealed.

2. And it is hereby enacted, that whenever any magistrate, or other officer exercising the powers of a magistrate, may be certified that a dispute likely to induce a breach of the peace exists concerning any land, premises, water, crops, fisheries, or other profits of land within the limits of his jurisdiction, he shall record a proceeding, stating the grounds of his being so certified, and shall call on every party* concerned in such dispute to attend his court in person or by agent, within a reasonable time, and to give in a written statement of their respective claims as respects the fact of actual possession of the subject of dispute; and the magistrate or other officer as aforesaid shall, without reference to the merits of the claims of any party to a right of possession, proceed to inquire what party was in possession of the subject in dispute when the dispute arose, and, after satisfying himself upon that point, shall record a proceeding declaring the party whom he may decide to have been in such possession to be entitled to retain possession until ousted by due course of law, and forbidding all disturbance of possession until such time; and, if necessary, the magistrate or other officer as aforesaid shall put such party in possession, and maintain him in possession, until the rights of the parties disputing be determined by a competent court.

This section is meant simply to enact the true intent of Reg. XV. of 1824.

3. And it is hereby enacted, that if the magistrate or other officer as aforesaid shall be unable to satisfy himself as to what party was in possession of the subject of the dispute when the dispute arose, he may attach the subject of dispute until the rights of the parties be determined by a competent court.

See para. 25 of note.

4. And it is hereby enacted, that if any party shall prove to the satisfaction of a magistrate or other officer as aforesaid after due inquiry, that he has been without authority of law forcibly dispossessed of any land, premises, water, crops, fisheries, or other profits of land within the jurisdiction of such magistrate or other officer, whether the same were possessed by such party as proprietor, dependent talookdar, farmer, under-farmer, ryot, or otherwise, the magistrate or other officer as aforesaid shall record a proceeding, stating the grounds of his award, and shall order such party to be put back in possession, and maintained in possession, until his right to possession be determined by a competent court; provided that no such order shall be passed, unless the party complaining of having been so dispossessed prefer his claim within three months from the time of such dispossession.

See paras. 18 to 20 of note.

5. And it is hereby enacted, that if a dispute arises concerning the right of use of any land or water, the magistrate or other officer as aforesaid, within whose jurisdiction the subject of dispute lies, may inquire into the matter; and if it shall appear to him that the subject of dispute was open to the use of the public, or of any person, or of any class of persons, the said magistrate or other officer may order that possession thereof shall not be taken or retained by any party to the exclusion of the public, or of such person or of such class of persons, until the party claiming such possession shall obtain the decision of a competent court adjudging him to be entitled to such exclusive possession; provided that the magistrate or other officer as aforesaid shall not pass any such order as aforesaid if the matter be such that the right of use may be daily exercised, unless that right shall have been ordinarily exercised within six months from the date of the institution of the inquiry, or if the matter be such that the right of use can be exercised only occasionally, at periodical intervals, unless the right of use shall have been exercised on the last occasion.

See para. 21 of note.

6. And it is hereby enacted, that any person opposing by force the execution of an order for possession or use, given under this Act, or refusing obedience thereto, or knowingly contravening the same as long as it shall remain in legal force, shall be liable on conviction before a magistrate, or other officer with the powers of a magistrate, to be sentenced to fine not exceeding rupees, or to simple imprisonment for a term not exceeding months, or to both.

7. And

* The object of this provision seems so obviously the prevention of breaches of the peace, that I can hardly think it necessary to explain the word "party," as including proprietors, dependent talookdars, farmers, under-farmers, ryots, or other persons. But this explanation could be easily added.

7. And it is hereby enacted, that all orders passed under this Act shall be appealable in the usual manner under the regulations and laws that are or may be in force relating to appeals from the orders of magistrates.

The proviso may be made to include the local jurisdiction of the Supreme and Recorder's Court. I am not myself sure that the Act, when properly amended, might not advantageously include these places. The chief magistrate is, I believe, often applied to by poor people in matters of this sort.

8. And it is hereby provided, that this Act shall not extend to any place beyond the limits of the Bengal Presidency.

(signed) *J. P. Grant*,
Officiating Secretary to the Government of India.

Consultations. 16 Sept. 1839. No. 8.

In the Draft Act concerning forcible dispossession.

MINUTE by the Honourable *A. Amos*, Esq., dated the 20th July 1839.

WE are indebted to Mr. Grant and Mr. Millett for very elaborate and useful notes upon the subject of this draft. The object of the papers submitted to us from the government of Bengal, was merely that Regulation XV. of 1824 might be made applicable to disputes between "cultivators," it having been held to be applicable to disputes between "proprietors" merely. Perhaps the Regulation might, by the aid of its preamble, be properly held to extend to cultivators; but this is doubtful, and in fact the Sudder court has for a length of time confined it to proprietors. If, however, this were the only ground for legislation, it might possibly be worth while to ascertain whether the present Sudder court would be willing to reconsider and alter the construction of their predecessors.

But there appear to be other grounds for legislation. First. It would seem that the duty of a magistrate in cases where forcible dispossession is anticipated merely, and the fact of who is in actual possession is doubtful, is not clearly defined by the existing Regulations. Secondly. Where the enjoyment consists in uses only, as of a tank or road, or the like, it may be doubted whether the existing Regulations apply, at least in all cases. Thirdly. It may be thought that the existing Regulations are defective in not specifying a period of limitation during which actual possession must have been enjoyed, or, at least, within which the complaint ought to be made. In regard to restitutions to rights of user at least, I think the user ought to have been of some specified continuance. Fourthly. It may be thought that a power of attaching the property in dispute should in some cases be granted to the magistrate. Fifthly. It may be advisable to take the present opportunity of obviating such ambiguities as arise from the unfortunate departure in the Regulation of 1824, from the terms used in that of 1793, in cases in which most probably the same thing was meant, and of supplying upon the face of the law that meaning which has been given to it by the constructions of the Sudder court in some instances, and which, without reference to such constructions, is by no means obvious. For example, Section 5, Regulation XV. of 1824, says that the "right to possession" shall be determined summarily. The Sudder, No. 571, 1830, say that the magistrate can only award that the "actual possessor" retain possession. The construction also that the terms "land or crops" include fisheries, is perhaps more convenient than legitimate. The descriptions of the litigant parties, and of the disputed property, and of the duties of the authority interposing, are different in terms, at least, in the two Regulations of 1793 and 1824. Sixthly. It may be thought advisable to give a power of summary restitution in cases of an authorized dispossession, even though there has been no breach of the peace, especially, as Mr. Grant observes, that it is the practice of magistrates to conjure up constructive breaches of the peace in such cases.

However, if the law were made applicable, either by construction or legislation, to the case of cultivators not less than proprietors, I am not prepared to say that the above six proposed improvements are so manifest or so important as to call very urgently for legislation.

But I think there is another ground more important than all the above grounds together, which seems to invite legislation; it is that of checking forcible dispossessions executed or threatened by British subjects and other Europeans. I apprehend the Draft Act, in its general terms, would include British subjects as well as every other class of persons.

Mr. Grant proposes some material questions. 1. Will this Act, and do other penal Acts, which are capable of being enforced, or (as is the case with the present Act) which can only be enforced in the Mofussil, include British subjects?

2. Is

No. VII.
Suppression of Affrays concerning Indigo.

2. Is this the general understanding of the public or of the Mofussil magistrates?

3. Should a declaratory Act as to this point be passed?

I have added a few words to the end of the 7th section, which I think will remove all hesitation (for I do not conceive that there can be any legal doubt) as to the intention and power of the Act, and am not disposed in favour of a declaratory Act, at least on the present occasion.

I have on various occasions pointed out the numerous instances in which, by our penal Acts, British subjects have been rendered punishable by single Mofussil magistrates (in some instances with two years' imprisonment, hard labour and fine), and have also observed, that in the instance of such punishments, it is at least very doubtful whether the British subject punished could avail himself of the remedy by appeal given by unregistered Regulations, and, on the other hand, whether process given by the Regulations, can be applied to the enforcement of such punishments against British subjects. But I think that this matter is too extensive, and involves too many difficult points to be disposed of on the present occasion.

(signed) *A. Amos.*

Consultations. 16 Sept. 1839. No. 9.

DRAFT ACT, as amended and approved by the Honourable the President in Council.

Title, "AN ACT for preventing Affrays concerning the Possession of Land, and for providing Relief in cases of forcible Dispossession."

1. WHEREAS it is expedient to remove doubts which have arisen upon the interpretation of Regulation XV. of 1824, and to incorporate in a legislative declaration various judicial constructions connected therewith, and to amend the said Regulation, and to extend it to certain cases not hitherto provided for, and to afford relief in cases of forcible dispossession committed by or against persons of every class and description; it is hereby enacted, that Section 5, Regulation VI. of 1813, and Regulation XV. of 1824, of the Bengal Code, be repealed.

2. And it is hereby enacted, that whenever any magistrate, or other officer exercising the powers of a magistrate, may be certified that a dispute likely to induce a breach of the peace exists concerning any land, premises, water, crops, fisheries, or other profits of land within the limits of his jurisdiction, he shall record a proceeding stating the grounds of his being so certified, and shall call on all parties concerned in such dispute (whether proprietors, dependent talookdars, farmers, under-farmers, ryots, or other persons) to attend his court, in person or by agent, within a reasonable time, and to give in a written statement of their respective claims as respects the fact of actual possession of the subject of dispute; and the magistrate or other officer as aforesaid shall, without reference to the merits of the claims of any party to a right of possession, proceed to inquire what party was in possession of the subject in dispute when the dispute arose, and after satisfying himself upon that point shall record a proceeding declaring the party whom he may decide to have been in such possession to be entitled to retain possession until ousted by due course of law, and forbidding all disturbance of possession until such time; and if necessary the magistrate or other officer as aforesaid shall put such party in possession, and maintain him in possession, until the rights of the parties disputing be determined by a competent court.

3. And it is hereby enacted, that if the magistrate or other officer as aforesaid shall be unable to satisfy himself as to what party was in possession of the subject of dispute when the dispute arose, he may attach the subject of dispute until the rights of the parties be determined by a competent court; and the provisions of Regulation V. of 1827, regarding attachment by order of a zillah or city court, shall apply to attachments by order of a magistrate or other officer as aforesaid made under this section.

4. And it is hereby enacted, that if any party shall prove, to the satisfaction of a magistrate or other officer as aforesaid, after due inquiry, that he has been,

No. VII.
Suppression of Affrays concerning Indigo.

without authority of law, forcibly dispossessed of any land, premises, water, crops, fisheries, or other profits of land within the jurisdiction of such magistrate or other officer, whether the same were possessed by such party as proprietor, dependent talookdar, farmer, under-farmer, ryot, or otherwise, the magistrate or other officer as aforesaid shall record a proceeding stating the grounds of his award, and shall order such party to be put back in possession, and maintained in possession, until his right to possession be determined by a competent court; provided that no such order shall be passed unless the party complaining of having been so dispossessed prefer his claim within one month from the time of such dispossession.

5. And it is hereby enacted, that if a dispute arises concerning the right of use of any land or water, the magistrate or other officer as aforesaid within whose jurisdiction the subject of dispute lies may inquire into the matter; and if it shall appear to him that the subject of dispute was open to the use of the public, or of any person, or of any class of persons, the said magistrate or other officer may order that possession thereof shall not be taken or retained by any party to the exclusion of the public, or of such person, or of such class of persons, until the party claiming such possession shall obtain the decision of a competent court adjudging him to be entitled to such exclusive possession; provided that the magistrate or other officer as aforesaid shall not pass any such order as aforesaid if the matter be such that the right of use is capable of being exercised at all seasons of the year, unless that right shall have been ordinarily exercised within one month from the date of the institution of the inquiry, or in cases where the right of user exists at particular seasons, unless such right has been exercised without discontinuance, before the dispossession of which complaint is made.

6. And it is hereby enacted, that any person opposing by force the execution of an order for possession or use given under this Act, or refusing obedience thereto, or knowingly contravening the same as long as it shall remain in legal force, shall be liable, on conviction before a magistrate, or other officer with the powers of a magistrate, to be sentenced to fine not exceeding rupees, or to simple imprisonment for a term not exceeding months, or to both.

7. And it is hereby enacted, that all orders passed under this Act shall be appealable in the usual manner under the regulations and laws that are or may be in force relating to appeals from the orders of magistrates, or other officers exercising the powers of magistrates, notwithstanding the party or parties be a British subject or subjects, or otherwise not amenable to any such regulation or law.

8. And it is hereby provided, that this Act shall not extend to any place beyond the limits of the presidency of Fort William in Bengal, or to the settlements of Prince of Wales's Island, Singapore, or Malacca, or to any place situated within the local limits of the jurisdiction of Her Majesty's Supreme Court at Calcutta.

(signed) *J. P. Grant*,
Officiating Secretary to the Government of India.

(No. 427.)

Consultations. 16 Sept. 1839. No. 10.

From *J. P. Grant*, Esq. Officiating Secretary to the Government of India, to *T. H. Maddock*, Esq. Officiating Secretary to the Government of India, with the Governor-general.

From Secretary to the Government of Bengal, dated 5 Feb. 1839, with 3 Enclosures, original.
Minute by the Hon. Mr. Robertson, dated 16 Feb. 1839, copy.
Minute by the Hon. Mr. Amos, dated 16 March 1839, copy.
Note by Mr. Millett, no date, original.
Note by Mr. Grant, no date, original.
Minute by the Hon. Mr. Amos, dated 20 July 1839, copy.
Draft of Act, dated 5 Aug. 1839, original.

I AM directed by the Honourable the President in Council to forward to you, to be laid before the Right honourable the Governor-general of India, the accompanying papers, as noted on the margin. The reference from Bengal is on the subject of disputes arising between indigo planters who cultivate or claim to hold lands on lease from zemindars or their tenants, and other persons, and suggesting the expediency of empowering, by a legislative enactment, magistrates to take summary cognizance of such disputes.

2. The

No. VII.
Suppression of Affrays concerning Indigo.

2. The Calcutta Sudder Court, in giving their opinion on the subject, in which opinion the western court also concurred, remarked, that the provisions of Regulation VI. of 1823 were applicable only to the adjustment of claims to crops for the raising of which advances had been given to the ryots. The extension of the right to British subjects to acquire and hold lands in their own names had of course given rise to a different state of things; hence the frequency of disputes between the proprietors of neighbouring factories for the right to cultivate land which each party claimed as included within its holdings. For the settlement of disputes arising from this source, the court recommended that they should be summarily inquired into, and that the magistrates should be empowered, as in other cases of dispute about lands, to decide which party had the best claim.

3. On receipt of this communication, his Honor the Deputy-governor, on the 22d September 1838, requested the Sudder Court to submit the draft of an enactment as proposed.

4. In compliance with this requisition, the Sudder Court, on the 18th of January 1839, in communication with the western court, submited the draft of an Act investing the magistrates with power to take cognizance of disputes regarding the right to cultivate lands for indigo, &c. The proposed law, at the suggestion of the western court, was assimilated to Regulation XV. 1824, so far as to include those cases only in which a breach of the peace was apprehended. The western court had likewise suggested that the provisions of the law should not be confined to indigo, but extended to all crops, or at least to the more valuable crops; the draft submitted by the lower court included only indigo, cotton, coffee, and mulberry crops.

5. In submitting these papers for the consideration of the Supreme Government, the Right honourable the Governor-general will observe, that his Honor the late Deputy-governor of Bengal did not approve the principle of the law proposed, inasmuch as he saw no good reason for having different laws to apply to disputes regarding different crops.

6. It was not thought expedient by his Honor in Council to give to the magistrates, as proposed, any power of passing a summary decision as to the rights of any parties in any disputes. The provisions of Regulation XV. of 1824 upon this point are, he thinks, perhaps ambiguous; but it has been judicially decided that the Regulation in question gives to the magistrate no power of deciding on the merits of the case, but only on the question of actual possession. The President in Council conceives that to give a power thus restricted was certainly the intention of the framers of that Regulation, which he believes was only meant to vest the magistrate with the summary power originally vested in the judge alone; but it was thought highly necessary to prevent breaches of the peace, by enabling magistrates to maintain the possession of persons actually in possession of land, crops, &c. whether such parties are proprietors or ryots, when disputes likely to lead to affrays arise, because constructions which had been put upon Regulation XV. of 1824 had rendered that Regulation in many cases useless. It was thought also highly necessary to give magistrates such powers in the case of British-born subjects, without which provision the object of the reference could not be obtained. It was thought also desirable to take the opportunity of empowering a magistrate to give immediate redress in cases of forcible and illegal dispossession, and to give him sufficient and well-defined power to maintain for the public or for classes of persons the use of roads, ghats, tanks, embankments, &c. when actually enjoyed, until the right of use in contested cases shall be determined by the civil courts. The accompanying Draft Act has accordingly been prepared.

7. In the event of the Right honourable the Governor-general approving of the Draft Act proposed, you are requested to obtain his Lordship's assent to its being published for general information, and its being finally passed without any material alteration.

8. You are requested to return the original papers with the draft of Act herewith sent, with your reply.

I have, &c.

(signed) *J. P. Grant*,,
Officiating Secretary to Government of India.

Fort William, 5 August 1839.

Consultations. 16 Sept. 1839. No. 11.

From *T. H. Maddock*, Esq. Officiating Secretary to the Government of India, with the Governor-general, to *J. P. Grant*, Esq. Officiating Secretary to the Government of India, Fort William.

Sir,

Legislative.

I AM directed to acknowledge the receipt of your letter, No. 427, dated the 5th instant, with enclosures, and draft of a proposed Act for preventing affrays concerning the possession of land, and for providing relief in cases of forcible dispossession.

2. The Governor-general approving the provisions of that Act, sanctions its publication for general information, and his Lordship's assent, in the usual form for its being finally passed into law, is enclosed herewith.

3. The original enclosures of your letter under acknowledgment are returned herewith.

I have, &c.
(signed) *T. H. Maddock*,
Officiating Secretary to the Government of India,
with the Governor-general.

Simlah, 29 August 1839.

Consultations. 16 Sept. 1839. No. 12. Enclosure.

ASSENT of the Right honourable the Governor-general, dated Simla, 29 August 1839.

Legislative.

I DO hereby, under section 70, 3 & 4 Will. 4, c. 85, give my assent to the proposed Act for preventing affrays concerning the possession of land, and for providing relief in cases of forcible dispossession, received from the Honourable the President in Council, in Mr. Officiating Secretary Grant's letter, No. 427, dated the 5th instant.

(signed) *Auckland.*

Consultations. 16 Sept. 1839. No. 13.

Fort William, Legislative Department, 16 September 1839.

THE following draft of a proposed Act was read in Council for the first time on the 16th September 1839:—

ACT, No. ——, of 1839.

AN ACT for preventing Affrays concerning the Possession of Land, and for providing Relief in cases of forcible Dispossession.

1. WHEREAS it is expedient to remove doubts which have arisen upon the interpretation of Regulation XV. of 1824, and to incorporate in a legislative declaration various judicial constructions connected therewith, and to amend the said Regulation, and to extend it to certain cases not hitherto provided for, and to afford relief in cases of forcible dispossession committed by or against persons of every class and description.

It is hereby enacted, that Section 5, Regulation VI. of 1813, and Regulation XV. of 1824 of the Bengal Code, be repealed.

2. And it is hereby enacted, that whenever any magistrate, or other officer exercising the powers of a magistrate, may be certified that a dispute likely to induce a breach of the peace exists concerning any land, premises, water, crops, fisheries, or other profits of land, within the limits of his jurisdiction, he shall record a proceeding, stating the grounds of his being so certified, and shall call on all parties concerned in such dispute (whether proprietors, dependent talookdars, farmers, under-farmers, ryots, or other persons) to attend his court in person, or by agent, within a reasonable time, and to give in a written statement of their respective claims as respects the fact of actual possession of the subject of dispute; and the magistrate or other officer as aforesaid shall, without reference to the merits of the claims of any party to a right of possession, proceed to inquire what party was in possession of the subject in dispute when the dispute arose, and after satisfying himself upon that point, shall record a proceeding declaring the party whom

No. VII.
Suppression of Affrays concerning Indigo.

whom he may decide to have been in such possession to be entitled to retain possession, until ousted by due course of law, and forbidding all disturbance of possession until such time; and if necessary the magistrate or other officer as aforesaid shall put such party in possession, and maintain him in possession, until the rights of the parties disputing be determined by a competent court.

3. And it is hereby enacted, that if the magistrate or other officer as aforesaid shall be unable to satisfy himself as to what party was in possession of the subject of dispute when the dispute arose, he may attach the subject of dispute until the rights of the parties be determined by a competent court; and the provisions of Regulation V. of 1827, regarding attachment by order of a zillah or city court shall apply to attachments by order of a magistrate or other officer as aforesaid made under this section.

4. And it is hereby enacted, that if any party shall prove to the satisfaction of a magistrate or other officer as aforesaid, after due inquiry, that he has been, without authority of law, forcibly dispossessed of any land, premises, water, crops, fisheries, or other profits of land within the jurisdiction of such magistrate or other officer as aforesaid, whether the same were possessed by such party as proprietor, dependent talookdar, farmer, under-farmer, ryot, or otherwise, the magistrate or other officer as aforesaid shall record a proceeding, stating the grounds of his award, and shall order such party to be put back in possession and maintained in possession until his right to possession be determined by a competent court, provided that no such order shall be passed unless the party complaining of having been so dispossessed prefer his claim within one month from the time of such dispossession.

5. And it is hereby enacted, that if a dispute arises concerning the right of use of any land or water, the magistrate or other officer as aforesaid within whose jurisdiction the subject of dispute lies may inquire into the matter, and if it shall appear to him that the subject of dispute was open to the use of the public, or of any person, or of any class of persons, the said magistrate or other officer may order that possession thereof shall not be taken or retained by any party to the exclusion of the public, or of such person, or of such class of persons, until the party claiming such possession shall obtain the decision of a competent court adjudging him to be entitled to such exclusive possession. Provided that the magistrate or other officer as aforesaid shall not pass any such order as aforesaid, if the matter be such that the right of use is capable of being exercised at all seasons of the year, unless that right shall have been ordinarily exercised within one month from the date of the institution of the inquiry, or in cases where the right of use exists at particular seasons, unless such right has been exercised without discontinuance before the dispossession of which complaint is made.

6. And it is hereby enacted, that any person opposing by force the execution of an order for possession or use, given under this Act, or refusing obedience thereto, or knowingly contravening the same, as long as it shall remain in legal force, shall be liable, on conviction before a magistrate or other officer with the powers of a magistrate, to be sentenced to fine not exceeding rupees, or to simple imprisonment for a term not exceeding months, or to both.

7. And it is hereby enacted, that all orders passed under this Act shall be appealable in the usual manner under the regulations and laws that are or may be enforced relating to appeals from the orders of magistrates or other officers exercising the powers of magistrates, notwithstanding the party or parties be a British subject or subjects, or otherwise not amenable to any such regulation or law.

8. And it is hereby provided, that this Act shall not extend to any place beyond the limits of the Presidency of Fort William in Bengal, or to the settlements of Prince of Wales's Island, Singapore, or Malacca, or to any place situated within the local limits of the jurisdiction of Her Majesty's Supreme Court at Calcutta.

Ordered, that the draft now read be published for general information.

Ordered, that the said draft be re-considered at the first meeting of the legislative council of India, after the 16th day of November next.

(signed) *J. P. Grant,*
Officiating Secretary to the Government of India.

(No. 398.)

Consultations 16 Sept. 1839 No. 14.

From *J. P. Grant*, Esq. Officiating Secretary to the Government of India, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal.

Sir,

No. 501. Similar to G. G. N. W. P.

I AM directed by the Honourable the President in Council to acknowledge the receipt of your letter, No. 276, of the 5th February last, with its enclosures, and in reply, to forward to you, for the information of the Honourable the Deputy-governor of Bengal, the accompanying printed copies of a proposed Act for preventing affrays concerning the possession of land, and for providing relief in cases of forcible dispossession, which has been read in Council for the first time on this date, and will be published for general information in the Calcutta Gazette. You are requested to obtain, with the permission of the Honourable the Deputy-governor, the observations of judges of the Sudder Court upon the draft.

2. The original papers received with your letter are herewith returned.

I have, &c.

(signed) *J. P. Grant*,
Officiating Secretary to the Government of India.

Council Chamber, 16 September 1839.

(No. 1818.)

Consultations. 6 Jan. 1840. No. 32.

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *J. P. Grant*, Esq. Officiating Secretary to the Government of India, Legislative Department.

Sir,

Judicial Department.

IN compliance with the requisition conveyed by your letter (No. 398), dated the 16th September last, I am directed by the Honourable the Deputy-governor of Bengal to transmit for the consideration of the Supreme Government the accompanying * letter from the register of the Nizamut Adawlut, containing the court's observations upon the law it is proposed to enact for preventing affrays concerning the possession of land, and for providing relief in cases of forcible dispossession.

* No. 2915, dated 1st instant.

I have, &c.

Fort William, 12 Nov. 1839. (signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

N. B.—Be good enough to return the enclosure.

(No. 2915.)

Consultations. 6 Jan. 1840. No. 33.

From *J. Hawkins*, Esq. Register, Nizamut Adawlut, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, in the Judicial Department.

Sir,

Enclosure.

Nizamut Adawlut. Present:—R. H. Rattray, W. Braddon, C. Tucker, E. Lee Warner, Esqrs. and Judges; A. Dick, Esq. Temporary Judge.

I AM directed to acknowledge the receipt of your letter, No. 1604, dated 30th September, and in reply, to request you will submit, for the consideration of his Honor the Deputy-governor, the following observations of the court on the subject of the law it is proposed to enact "for preventing affrays concerning the possession of land, and for providing relief in cases of forcible dispossession."

2d. The court are of opinion that the term "other profits of land," at line 5th of section 2, is of too extensive a signification; and they would suggest an alteration of the passage in which it occurs, to the following effect: "Any land, premises, water, fisheries, crops, and other produce of land."

The alteration, if adopted, must also be made in the 4th section.

3d. With reference to that part of section 2, which proposes to invest the magistrates with power to inquire what party was in possession of the subject in dispute when the dispute arose, and to maintain the possession of such party, without

No. VII.
Suppression of Affrays concerning Indigo.

without reference to the merits of the claims of any party to a right of possession, the court would suggest the addition of a proviso in favour of proprietors and farmers of land exercising the powers vested in them by Sections 3 and 15, Regulation VII. 1799, Section 13, Regulation V. 1812, and Section 18, Regulation VIII. 1819, with a view to the punctual realization of their rents.

4th. It appears to the court that an application to the collector under the provisions of Regulation V. 1827, would not in all cases be necessary, (such, for instance, as the attachment of small portions of land or crops,) but that, on the contrary, the order for attachment might be more effectually enforced by the subordinates of the magistrates. The court would accordingly recommend an alteration of section 3, to the effect that all estates paying revenue to government, and dependent talooks, should be attachable through the instrumentality of the collector, and other subjects of dispute directly by the magistrate himself. Section 3.

5th. As the proposed Act does not rescind any part of Regulation XLIX. 1793, the court would further suggest the addition of a provision declaring that the same cause of action shall not be simultaneously cognizable both by the civil and criminal authorities.

6th. The proposed Act restricts the magistrate's inquiry to the fact of actual possession at the time the dispute arose. But the court observe, that in disputes regarding churs and other newly-formed lands, it is often difficult, if not impossible, to determine which party was in possession; neither party, in point of fact, having had possession of the accretion. They would therefore suggest that a proviso be made for such cases, by empowering the magistrate to dispose of them under the rules laid down in the first four clauses of Section 4, Regulation XI. 1825.

7th. They would also suggest that the rules contained in Clause 2, Section 5, Regulation VI. 1813, be incorporated in the Act, to allow of magistrates referring disputes regarding possession of land to arbitration, with the consent of the parties.

8th. The court do not enter upon the question of appeal from orders passed under the proposed Act, as the subject of appeal to the Nizamut Adawlut in all cases of illegality, from orders passed in other than criminal trials, is already before the government under a separate reference from the court.

I have, &c.

Fort William, 1 Nov. 1839. (signed) *J. Hawkins,*
Register.

Consultations.
6 Jan. 1840.
No. 34.

MINUTE by the Honourable *A. Amos*, Esq. dated 20th November 1839.

Suggestions of Sudder Court for amending Draft Act about dispossession.

1st. THE Sudder Court recommend the words "other produce of land" to be subsituted for "other profits of land."

I think this is an improvement.

2d. Proviso suggested, "that nothing in this section contained shall be held to rescind or alter the powers vested in proprietors and farmers of land, by Sections 3 and 15, Regulation VII. of 1799, Section 13, Regulation V. of 1812, and Section 18, Regulation VIII. of 1819, of the Bengal Code, for the realization of rents."

I suppose this proviso is proper. Our secretary will be pleased to examine the wording of it.

3d. An amendment is proposed as to the form of attachment. I suppose this is right. The matter is so technical with reference to Mofussil regulations and practice, that the secretary should be requested to draft the amendment.

4th. An amendment to prevent both a civil and criminal proceeding for the same cause, with reference to Regulation XLIX. of 1793.

5th. Proposal, that as to newly-formed lands by accretion, the right to possession should be determined according to the rules in Section 4, Regulation XI. of 1825, first four clauses.

6th. Proposal to allow of arbitrations by consent, under Clause 2, Section 5, Regulation VI. of 1813.

7th. Suggestion that the question of appeal will be determined by another reference, now before government.

Upon each of the above points, our secretary may be of considerable use to us, by preparing the requisite information.

(signed) *A. Amos.*

Consultations. 6 Jan. 1840. No. 35.

(No. 1725.)

From *M. Smith*, Esq. Officiating Register, Nizamut Adawlut, North Western Provinces, to *J. P. Grant*, Esq. Officiating Secretary to the Government o India, Fort William.

Sir,

N. A. N. W. P. Present:—W. Lambert, W. Monkton, and B. Tayler, Esqrs. Judges.

WITH reference to the circumstances stated in paragraph 2, of a letter this day addressed by the court to the secretary to the Governor-general, North Western Provinces, I am directed to transmit herewith a copy of the same, direct for submission to the Honourable the President in Council.

I have, &c.

Allahabad, 22 Nov. 1839. (signed) *M. Smith*, Officiating Register.

(No. 1724.)

From *M. Smith*, Esq. Officiating Register, Nizamut Adawlut, North Western Provinces, to *F. Currie*, Esq. Secretary to the Right honourable the Governor-general, in the Judicial Department, North Western Provinces.

Sir,

N. A. N. W. P. Present:—W. Lambert, W. Monkton, and B. Tayler, Esqrs. Judges.

I AM directed to acknowledge the receipt of your letter (No. 2563), dated 18th ultimo, sending printed copies of a proposed Act for preventing affrays concerning the possession of land, and for providing relief in cases of forcible dispossession, for the observations of the court.

2d. In reply, the court instruct me to request you will represent their regret that, owing to an accidental omission to advert to the period fixed for the reconsideration of the draft of the Act referred to, some delay has been suffered to take place in the submission of their answer, which would not have occurred if they had alluded to the circumstance stated; and it is apprehended that before this communication can reach the presidency, the proposed Act may have passed into law. The court have accordingly thought it best to forward a copy of this letter direct to the officiating secretary to the government of India.

3d. The consideration which the court have given to the draft, with reference to existing Regulations and judicial constructions, has, however, suggested no other remark to them than that they think such parts of Regulation XLIX. of 1793, and Regulation XXXII. of 1803, as provide for summary civil suits for forcible dispossession, as well as such parts of other Regulations as extend those provisions to the Benares and other provinces, should be declared repealed in the present Act.

4th. Should the Act have been already passed, the court would suggest that such declaration of repealment might be suitably included in a separate Act, which they are of opinion is much needed for the better and more effectual adjustment of disputes regarding land, declaring the course to be followed by the civil courts on the institution of a suit by a claimant to land attached by a magistrate under the circumstances contemplated in section 3 of the present draft.

5th. The court would submit that to facilitate the final determination and adjustment of such disputes, must be regarded as a most important object, to meet which the existing law is very defective. At present, the dismissal of the claim of *A.* in no way includes the disposal of the pretensions of *B. C.* and *D.*, the prolonged agitation of which maintains dissension and tendency to breaches of the peace. The Act the court would propose contemplates the simultaneous adjudication of all conflicting claims.

6th. The court would suggest an enactment, requiring that, on the institution of a suit in the civil court by any one person, under the circumstances stated in section 3 of this draft, all persons who may have asserted their rights in the subject of dispute before the magistrate in the criminal court should be served with notices to appear, and each set forth his own, and file an answer to the other's claim in the prescribed form and manner.

7th. Each of the claimants in such suits should be allowed to file his petition on stamped paper, of the value prescribed for miscellaneous petitions, provided that this privilege should be restricted to instances wherein one of the disputing parties might institute a suit within the period of three months from the date of attachment

No. VII.
Suppression of Affrays concerning Indigo.

ment by the magistrate (deducting the time which might elapse in transcribing the order of that officer, under the rule at present applicable to copies of decrees of the civil court), otherwise each should be required to state his claim on paper bearing a full stamp.

I have, &c.

Allahabad,
22 November 1839.

(signed) *M. Smith*,
Officiating Register.

(True copy.)

(signed) *M. Smith*,
Officiating Register.

NOTE by the Officiating Secretary, dated 10 December 1839.

Consultations,
6 Jan. 1840.
No. 36.
Dispossession Act.

I HAVE the honour, as directed, respectfully to submit an amended draft of the Dispossession Act, revised with particular advertence to the remarks and proposals of the two Sudder courts.

This is done in the amended draft, in sections 2 & 4.

There is no similar proviso in any of the existing Regulations, though the principle of this Act, and that of the existing Regulations (XLIX. of 1793, and XV. of 1824) being the same, if requisite in this Act, the want in those Regulations ought to have been felt. I cannot think that lawful attachment or distraint, disputed causelessly, could be considered by any magistrate as coming within the meaning of this Act, so as to oblige him to give back the property so attached or distrained. Literally I do not think the words would bear such a construction, because lawful possession passed on the attachment, and the dispute was the consequence.

PROPOSALS.—CALCUTTA COURT.

1st Point.—To substitute the word "produce" for "profit."

2d Point.—To add a proviso to Section 2, that "nothing in this section contained shall be held to rescind or alter the powers vested in proprietors and farmers of land by Sections 3 & 15, Regulation VII. of 1799; Section 13, Regulation V. of 1812; and Section 18, Regulation VIII. of 1819, of the Bengal Code, for the realization of rents."

The Act only relates to forcible dispossession, or disturbance of possession.

A private person attaching, if he apprehends resistance, ought to require the aid of the police; he has no right to oust from a tenure, if resisted, without a summary procedure.

And to provide a saving clause for exercise of the legal powers of courts and public officers seems to me certainly a very unnecessary, and perhaps an objectionable measure.

However, as the court raised the question, it may be thought right to add a proviso to this effect.

But at any rate I would suggest, that the proposed citation of the Regulations should be omitted. No powers for recovery of rent are given by Section 13, Regulation V. of 1812, which is cited.

On the contrary, that section restricts or regulates the use of existing powers; and many Regulations not cited give such powers; for instance, the first Regulation of all, and the principal one still that gives any such powers, is Regulation XVII. of 1793, "for empowering landholders and farmers of land to distrain and sell the personal property of under-farmers, ryots, &c.," which is not cited.

It further appears to me that any proviso, restricted as proposed to save powers given by law for realization of rents, would do more harm than good.

Because there are many other powers in the same predicament, which as much require a saving proviso; for instance, power to seize and sell personal property for non-payment of revenue; boats, &c. for non-payment of toll; contraband goods *in transitu*, &c.

Even attachment by a court of justice is in the same predicament; attachment by a zemindar for rent being as much warranted by positive law as attachment by a peon under an order of court. To provide by a saving clause for only one class of cases, leaving many others in the same predicament unprovided for, would, I think, be more dangerous than to provide for none.

Again: I think other parts of the Act may be held as much to want such a proviso as section 2.

Therefore I have suggested a proviso, if it be resolved to have one at all, drawn quite in general terms, saving all lawful seizure, covering the whole Act, and forming a section by itself, viz. section 11.

3d. To make only estates paying revenue to government, and dependent talooks, attachable through the collector.

Regulation V. of 1827, cited in section 3, applies only to "landed property." I have proposed to insert words, which will clearly make the attachment, through the collector, apply only to land. The magistrate will attach all crops, fisheries, produce, &c.

But the collector seems the fit person to attach all land, whether of large or small extent. If the magistrate be allowed to attach, through his own officers, any land, provisions to regulate his attachment, as regards accounting for profits, payment of rent, &c., would be requisite, such as are in Clause 3, Section 5, Regulation VI. of 1813, which have been specifically superseded by Section 2, Regution V. of 1827.

It seems to me that the collector is the fitter person to have to do with managing land, receiving and paying rents, &c.

4th. To prevent the simultaneous conduct of one summary action in the civil courts and another before the magistrate for the same cause of action.

I should have thought that, on general principles, the institution of a case in one competent court would prevent another court of concurrent jurisdiction from taking up the same case, without any express provision for the purpose.

However, it will probably be thought best to make the provision specially, and I have proposed a section (9) accordingly, in which I have included Regulation VII. of 1822 (under which, collectors forming a settlement have the powers of a magistrate under Regulation XV. of 1824, in the cases in question), and I have made the provision reciprocal.

5th. To allow the magistrate to determine (in the first instance) as to the right to possession in churs and new formations, where it is difficult to determine which party had possession.

This appears to me a very useful amendment. But I would propose to restrict this enlargement of the scope of the Act to cases of new formations, where it appears that no party ever had possession. Section 3 will suffice for churs, as for other lands, where there is merely a difficulty of discovering which party had possession.

And where any party is found ever to have had possession, it would seem a departure from the principle of the Act to allow the magistrate to go into the question of rights, merely because he cannot discover who is in possession at the moment. I have proposed section 5 of the amended draft for effecting this amendment.

6th. To incorporate in the Act the Rules of Cl. 2, Sec. 5, Regulation VI. of 1813, to allow magistrates to refer these disputes to arbitration.

To carry this amendment into effect, which also seems to me very useful, I have proposed section 10 of the Draft Act. But it is of more restricted operation than the old clause cited by the court; that clause was made when the civil court was entrusted with the powers now transferred to magistrates in these cases; that clause, unobjectionably, perhaps, allowed the civil judge, in a summary suit of this sort, to refer, by consent, even the question of rights to arbitration, and to execute the award, "if open to no just cause of impeachment," which would determine the right for ever.

I have thought it would be deemed proper to restrict the arbitrators to matter within the jurisdiction of the magistrate's court, which now refers the case, viz. to the fact of possession (except in the chur cases occasionally). It would seem anomalous to allow the magistrate, who could not adjudge the right himself, or even enter on the question of right, to examine into and execute an arbitration award that would settle the right.

7th. Question of appeal not touched upon.

As the general law stands, there will be an appeal from these summary decisions to the sessions judge on the whole case. It may be matter for the consideration of the members of government to allow an appeal only on the relevancy of the Act, that is, on the question of law. At present there is a general appeal from decisions under Regulation XV. of 1824. Experience has fully shown that an appeal on the question of law might be desirable, even as a special appeal from the sessions judge to the Nizamut Adawlut; therefore I believe no one would propose to cut off that appeal from the magistrate to the sessions judge. The appeal on the question of the fact of possession is more open to observation, considering that the sole object of the Act is to make a temporary settlement of a dispute. As the Act is drawn, the law on this point will remain what it now is.

Allahabad Court.

To repeal so much of Reg. XLIX. of 1793, and corresponding Regulations, as relates to

At present there are, in theory, two doors open; one to the magistrate, and one to the judge. What the law is now, this amended draft would leave it in this respect. There is no necessity to repeal the old Regulations as proposed, and on the other hand, there would be no difficulty or inconvenience in so doing.

Unfortunately,

Unfortunately, the three Regulations entire cannot be repealed without raising questions larger than those involved in the present law.

summary suits for possession instituted in the civil courts.

They might be repealed, for they are, practically, dead letter; and on a reference to them, it will probably be thought, with respect to their penal clauses, that it is well they are so.

But subsequent criminal Regulations regarding affrays (Regulation I. of 1822) refer to Regulation XLIX. of 1793, as defining the offence of affray, though I do not see that it does so define that offence. Although, therefore, it would be very neat if this Act repealed the three Regulations in question, and stood forth as a consolidating law of dispossession, there might possibly be inconvenience in that course.

I myself, however, see no valid objection to the entire repeal of those Regulations; but it is right to notice the bearings of the whole question.

2d. To amend the civil procedure of regular suits instituted when the subject of dispute is attached under section 3 of this Act, because nobody can prove possession; by allowing (as it were) all parties but one to file cross-bills on low stamps, and calling on all claimants to do so.

This suggestion, relating to civil procedure, has no connexion with the present Act. If I understand the suggestion rightly, it only affects the question of stamp duties.

If *A.* *B.* and *C.* dispute before the magistrate for possession of land, and the magistrate, because he cannot ascertain which was in possession, attaches the land, it seems clear, there being no fourth claimant for possession, that possession lies between those three.

If *A.* sues in the civil court, he must, of course, sue both *B.* and *C.*, who may defend severally, and if he gains his suit the matter is at an end. *B.* and *C.* may do the same, by each suing the other claimants, or they may wait the issue of *A.*'s suit.

If, as will generally happen, there are only two claimants, one suit must settle the matter, since possession must lie between the two; and as the loser cannot have the right of possession, the gainer, whether plaintiff or defendant, must have it.

Any third party having a claim as against the gainer, who will then be the possessor, can then sue him, but he cannot do so before.

I do not quite see the reason for remitting stamp duties in these, any more than in other, cross-suits, nor the justice of charging the party who claims first with full stamp duty, and all others with low stamp duty. Nor do I see how *D.* *E.* and *F.*, not having been claimants to possession, can be forced into this combat between *A.* *B.* and *C.*, even though they may each have claims for the very same land against one or other of the combatants dependent on the issue.

At any rate, I presume no clause to this effect is proposed to be added to this Act, which is confined to the magistrate's procedure.

Preamble, and Section 8.

An alteration is suggested in the preamble. I find, on examination, that only two judicial constructions are incorporated in the Act, the chief use of the Act being to get rid of the bad effect of several such constructions; therefore I have suggested the omission of the part of the preamble referring to that point; and I have suggested that the applicability of the Act to British subjects be clearly shown in the preamble, as a reason for the Act. Unless the words "British-born subjects" be introduced, it might still appear that the general words "persons of any class or description" were intended only to include native ryots, &c. not proprietors, who had been excluded by constructions of the old law.

If this be approved, the mention of British subjects in section 8 (old section 7) may be omitted, as in the amended draft. There might seem an awkwardness in specifying British subjects only in the clause regarding appeals; for if they are amenable in the original suit, they must be amenable to the appeal.

Section 4.

Section 4 is altered to meet the Resolution come to in Council, when the Act was last mentioned, by showing more clearly that the magistrate is not to proceed without hearing defence, &c.

The same meaning was intended to be conveyed by the words "after due inquiry;" but I understood that it was determined to specify more fully the course of procedure to be adopted before passing an order on a complaint of forcible dispossession. The above points are, with an amended Act, respectfully submitted for consideration and orders.

(signed) *J. P. Grant,*
Officiating Secretary, Government of India.

No. VII.
Suppressi n of Affrays concerning Indigo.

PROPOSED AMENDED ACT BY Mr. *Grant*.

Fort William, Legislative Department,
16 September 1839.

ACT, No. ——, of 1839.

Consultations. 6 Jan. 1840. No. 37.

AN ACT for preventing Affrays concerning the Possession of Land, and for providing Relief in cases of forcible Dispossession, within the Presidency of *Fort William*, in *Bengal*.

I. WHEREAS it is expedient to remove doubts which have arisen upon the interpretation of Regulation XV. of 1824, and to amend the law as contained in that Regulation, for preventing affrays concerning the possession of land, and for giving relief in cases of forcible dispossession, and to extend it to cases not hitherto provided for, and to make it applicable to persons of every class or description, whether British-born subjects or others;

It is hereby enacted, that Section 5, Regulation VI. of 1813, and Regulation XV. of 1824, of the Bengal Code, be repealed.

II. And it is hereby enacted, that whenever any magistrate, or other officer exercising the powers of a magistrate, may be certified that a dispute, likely to induce a breach of the peace, exists concerning any land, premises, water, fisheries, crops, or other produce of land, within the limits of his jurisdiction, he shall record a proceeding, stating the grounds of his being so certified, and shall call on all parties concerned in such dispute (whether proprietors, dependent talookdars, farmers, under-farmers, ryots, or other persons) to attend his court, in person or by agent, within a reasonable time, and to give in a written statement of their respective claims, as respects the fact of actual possession of the subject of dispute; and the magistrate or other officer as aforesaid shall, without reference to the merits of the claims of any party to a right of possession, proceed to inquire what party was in possession of the subject of dispute when the dispute arose, and, after satisfying himself upon that point, shall record a proceeding declaring the party whom he may decide to have been in such possession to be entitled to retain possession, until ousted by due course of law, and forbidding all disturbance of possession until such time; and if necessary, the magistrate or other officer as aforesaid shall put such party into possession, and maintain him in possession, until the rights of the parties disputing be determined by a competent court.

III. And it is hereby enacted, that if the magistrate or other officer as aforesaid shall be unable to satisfy himself as to what party was in possession of the subject of dispute when the dispute arose, he may attach the subject of dispute until the rights of the parties be determined by a competent court; and if the subject of dispute be land, the provisions of Regulation V. of 1827, regarding attachment by order of a zillah or city court, shall apply to attachments by order of a magistrate or other officer as aforesaid, made under this section.

IV. And it is hereby enacted, that if any party shall complain to a magistrate or other officer as aforesaid, that he has been, without authority of law, forcibly dispossessed of any land, premises, water, fisheries, crops, or other produce of land, within the jurisdiction of such magistrate or other officer as aforesaid, whether the same were possessed by such party as proprietor, dependent talookdar, farmer, under-farmer, ryot, or otherwise, the magistrate or other officer as aforesaid shall require the party or parties complained against to appear and make defence, in person or by agent, within a reasonable time; and if, after the examination of the necessary witnesses and documents, the complaint appears to him to be substantiated, he shall record a proceeding, ordering the party complaining to be put again into possession of the subject of dispute, and maintained in possession until the right to possession be determined by a competent court; provided that no such order shall be passed, unless the party complaining of having been so dispossessed, prefer his claim within one month from the time of such dispossession.

V. And it is hereby enacted, that if, in cases instituted under this Act, the subject of dispute be newly-formed land, whereof it shall appear to the magistrate or other officer as aforesaid that no party has ever had possession, the magistrate or other officer as aforesaid shall award possession to the party to whom he may determine that the right of possession belongs, according to law or custom, and shall maintain that party in possession, until the right to possession be determined by a competent court.

VI. And

No. VII.
Suppression of Affrays concerning Indigo.

VI. And it is hereby enacted, that if a dispute arises concerning the right of use of any land or water, the magistrate or other officer as aforesaid within whose jurisdiction the subject of dispute lies, may inquire into the matter; and if it shall appear to him that the subject of dispute was open to the use of the public, or of any person, or of any class of persons, the said magistrate or other officer may order that possession thereof shall not be taken or retained by any party to the exclusion of the public, or of such person, or of such class of persons, as the case may be, until the party claiming such possession shall obtain the decision of a competent court adjudging him to be entitled to such exclusive possession. Provided that the magistrate or other officer as aforesaid shall not pass any such order as aforesaid, if the matter be such that the right of use is capable of being exercised at all times of the year, unless that right shall have been ordinarily exercised within three months from the date of the institution of the inquiry, or in cases where the right of use exists at particular seasons, unless such right has been exercised without discontinuance before the dispossession of which complaint is made.

VII. And it is hereby enacted, that any person opposing by force the execution of an order for possession or use, given under this Act, or refusing obedience thereto, or knowingly contravening the same, as long as it shall remain in legal force, shall be liable, on conviction before a magistrate or other officer with the powers of a magistrate, to be sentenced to simple imprisonment for a term not exceeding six months, or to fine not exceeding 200 rupees, commutable if not paid to a period of simple imprisonment not exceeding six months, or to both.

VIII. And it is hereby enacted, that all orders passed under this Act shall be appealable in the usual manner, under the Regulations and Laws that are or may be in force relating to appeals from the orders of magistrates or other officers exercising the powers of magistrates.

IX. And it is hereby enacted, that the institution of proceedings under this Act shall bar the institution of proceedings under Regulation XLIX. of 1793, Regulation XIV. of 1795, Regulation XXXII. of 1803, or Regulation III. of 1822, for the same cause of action; and in like manner the institution of proceedings under any of the said Regulations shall bar the institution of proceedings under this Act.

X. And it is hereby enacted, that in cases instituted under this Act, the magistrate or other officer as aforesaid is authorized, with the consent of all the parties, to refer the matter in dispute, so far as it is cognizable under this Act, to an arbitrator or arbitrators for decision, whose award shall be executed as if it were the award of such magistrate or other officer as aforesaid.

XI. And it is hereby provided that nothing in this Act contained shall affect the legal exercise of any right of attachment or seizure vested by law in any parties.

XII. And it is hereby further provided, that this Act shall not extend to any place beyond the limits of the presidency of Fort William, in Bengal, or to the settlements of Prince of Wales's Island, Singapore, or Malacca, or to any place situated within the local limits of the jurisdiction of Her Majesty's Supreme Court at Calcutta.

(signed) *J. P. Grant*,
Officiating Secretary to the Government of India.

Fort William, Legislative Department,
6 January 1840.

Consultations.
6 Jan. 1840.
No. 38.

THE following extract from the proceedings of the Honourable the President in Council, in the Legislative Department, under date the 6th January 1840, is published for general information:

Read a second time the draft of a proposed Act, dated the 16th September 1839, and published in the Calcutta Gazette of the 21st of the same month, for preventing affrays concerning the possession of land, and for providing relief in cases of forcible dispossession within the presidency of Fort William, in Bengal.

Resolution.—The Honourable the President of the Council of India in Council resolves that the following amended Draft Act on the subject be republished for general information:

No. VII.
Suppression of Affrays concerning Indigo.

ACT, No. ——, of 1840.

AN ACT for preventing Affrays concerning the Possession of Land, and for providing Relief in cases of forcible Dispossession, within the Presidency of *Fort William*, in *Bengal*.

I. WHEREAS it is expedient to remove doubts which have arisen upon the interpretation of Regulation XV. of 1824, and to amend the law for preventing affrays concerning the possession of land, and for giving relief in cases of forcible dispossession, and to extend it to cases not hitherto provided for, and to make it applicable to persons of every class or description, whether British-born subjects or others;

It is hereby enacted, that Regulation XLIX. of 1793, Regulation XIV. of 1795, Regulation XXXII. of 1803, Section 5, Regulation VI. of 1813, Regulation XV. of 1824, and Regulation II. of 1829, of the Bengal Code, together with so much of any Regulations as extends any of the above Regulations or parts of Regulations to any places within the presidency of Fort William, in Bengal, be repealed.

II. And it is hereby enacted, that whenever any magistrate or other officer exercising the powers of a magistrate may be certified that a dispute likely to induce a breach of the peace exists concerning any land, premises, water, fisheries, crops, or other produce of land, within the limits of his jurisdiction, he shall record a proceeding, stating the grounds of his being so certified, and shall call on all parties concerned in such dispute (whether proprietors, dependent talookdars, farmers, under-farmers, ryots or other persons) to attend his court, in person or by agent, within a reasonable time, and to give in a written statement of their respective claims as respects the fact of actual possession of the subject of dispute. And the magistrate or other officer as aforesaid shall, without reference to the merits of the claims of any party to a right of possession, proceed to inquire what party was in possession of the subject of dispute when the dispute arose, and after satisfying himself upon that point, shall record a proceeding declaring the party whom he may decide to have been in such possession to be entitled to retain possession, until ousted by due course of law, and forbidding all disturbance of possession until such time; and if necessary, the magistrate or other officer as aforesaid shall put such party into possession, and maintain him in possession, until the rights of the parties disputing be determined by a competent court.

III. And it is hereby enacted, that if the magistrate or other officer as aforesaid shall, in the cases mentioned in section 2 of this Act, be unable to satisfy himself as to what party was in possession of the subject of dispute when the dispute arose, he may attach the subject of dispute until the rights of the parties be determined by a competent court, giving the collector information of the attachment; and if the subject of dispute be land, the provisions of Regulation V. of 1827 regarding attachment by order of a zillah or city court, shall apply to attachments by order of a magistrate or other officer as aforesaid, made under this section.

IV. And it is hereby enacted, that if any party shall complain to a magistrate or other officer as aforesaid, that he has been, without authority of law, forcibly dispossessed of any land, premises, water, fisheries, crops, or other produce of land, within the jurisdiction of such magistrate or other officer as aforesaid, whether the same were possessed by such party as proprietor, dependent talookdar, farmer, under-farmer, ryot or otherwise, the magistrate or other officer as aforesaid shall require the party or parties complained against, and any other parties concerned, to appear and make defence, in person or by agent, within a reasonable time; and if, after the examination of the necessary witnesses and documents, the complaint appears to him to be substantiated, he shall record a proceeding, ordering the party complaining to be put again into possession of the subject of dispute, and maintained in possession until the right to possession be determined by a competent court; provided that no such order shall be passed unless the party complaining of having been so dispossessed prefer his claim within one month from the time of such dispossession.

V. And it is hereby enacted, that if in cases instituted under this Act, the subject of dispute be newly-formed land, whereof it shall appear to the magistrate or other officer as aforesaid that no party has ever had possession, the magistrate or other officer as aforesaid shall award possession to the party to whom the right of possession belongs according to law or custom, and shall maintain that party

No. VII.
Suppression of Affrays concerning Indigo.

party in possession until the right to possession be determined by a competent court.

VI. And it is hereby enacted, that if a dispute arises concerning the right of use of any land or water, the magistrate or other officer as aforesaid within whose jurisdiction the subject of dispute lies, may inquire into the matter; and if it shall appear to him that the subject of dispute was open to the use of the public, or of any person, or of any class of persons, the said magistrate or other officer may order that possession thereof shall not be taken or retained by any party to the exclusion of the public, or of such person, or of such class of persons, as the case may be, until the party claiming such possession shall obtain the decision of a competent court adjudging him to be entitled to such exclusive possession. Provided that the magistrate or other officer as aforesaid shall not pass any such order as aforesaid, if the matter be such that the right of use is capable of being exercised at all times of the year, unless that right shall have been ordinarily exercised within three months from the date of the institution of the inquiry, or in cases where the right of use exists at particular seasons, unless such right has been exercised without discontinuance before the dispossession of which complaint is made.

VII. And it is hereby enacted, that any person opposing by force the execution of an order for possession or use, given under this Act, or refusing obedience thereto, or knowingly contravening the same, as long as it shall remain in legal force, shall be liable, on conviction before a magistrate or other officer with the powers of a magistrate, to be sentenced to simple imprisonment for a term not exceeding six months, or to fine not exceeding 200 rupees, commutable if not paid to a period of simple imprisonment not exceeding six months, or to both imprisonment and fine as aforesaid.

VIII. And it is hereby enacted, that all orders passed under this Act shall be appealable in the usual manner, under the Regulations and Laws that are or may be in force relating to appeals from the orders of magistrates or other officers exercising the powers of magistrates.

IX. And it is hereby enacted, that in cases instituted under this Act the magistrate or other officer as aforesaid is authorized, with the consent of all the parties, to refer the matter in dispute, so far as it is cognizable under this Act, to an arbitrator or arbitrators for decision, whose award shall be executed as if it were the award of such magistrate or other officer as aforesaid.

X. And it is hereby further provided, that this Act shall not extend to any place beyond the limits of the Presidency of Fort William, in Bengal, or to the settlements of Prince of Wales's Island, Singapore, or Malacca, or to any place situated within the local limits of the jurisdiction of Her Majesty's Supreme Court at Calcutta.

Ordered, that the amended draft now read be published for general information.

Ordered, that the said draft be re-considered at the first meeting of the Legislative Council of India, after the 6th day of February next.

(signed) *J. P. Grant*,
Officiating Secretary to the Government of India.

(No. 47.)

From *J. P. Grant*, Esq. Officiating Secretary to the Government of India, to the Register of the Sudder Dewanny Adawlut at the Presidency.

Consultations. 6 Jan. 1840. No. 39.

Sir,

I AM directed by the Honourable the President in Council, with reference to your letter to Mr. Secretary Halliday, dated the 1st November last (No. 2915), to request that you will lay before the judges for their information, and any remarks that may seem requisite, the accompanying amended draft of an Act for preventing affrays concerning the possession of land, &c., read for the second time in Council this day.

Legislative Dep.

2. The several suggestions made by the judges in your letter above referred to, have been taken into consideration, and have, as will be observed, to a great extent been adopted by the Legislative Council.

No. VII.
Suppression of Affrays concerning Indigo.

3. It does not appear to the President in Council to be necessary to add the proviso suggested in the third paragraph of your letter.

Regulations XLIX. of 1793, and XV. of 1824.

The principle of the proposed Act does not differ from that of the existing Regulations; there is no similar proviso in them, and the want of one has not been felt, which his Honor in Council thinks must have been the case were any such proviso really necessary. His Honor in Council thinks there is little reason to fear that lawful attachment or distraint could be considered by any magistrate as coming within the meaning of this Act, so as to require or authorize him to give back the property so attached or distrained. Such a proviso is obviously not necessary in respect to Section 4, which specifies forcible dispossession, "without authority of law." And his Honor in Council does not think that the words of Section 2, quoted in your letter, would bear the construction anticipated. Section 2 only applies to cases likely to induce a breach of the peace; that is, to cases where force is used, or likely to be used; for if an attachment lawfully executed, whether by the assistance of the police or otherwise, were to be causelessly disputed subsequently in such a manner as to make a breach of the peace likely to ensue, that is to say, with force, or show of force, as lawful possession passed on the attachment, in consequence of which the dispute arose, it could not with propriety be said that the party lawfully dispossessed was in possession of the subject of dispute when the dispute arose.

And if a lawful attachment by a zemindar, or other individual, be attempted, and be resisted with force, or show of force, his Honor in Council apprehends that such person ought to apply, according to the Regulations, for the assistance of the police, and would not be warranted in using force otherwise, and ought not to be supported in so doing.

4. The President in Council observes, that the lawful exercise of lawful attachments by a court of justice, or by a revenue officer, in numerous cases is in the same predicament with the lawful exercise of lawful attachments by zemindars and certain other private individuals; yet a proviso saving such attachment has not been suggested, and indeed would seem obviously superfluous, even if not in itself objectionable.

5. If such a proviso be not absolutely unnecessary, it would seem to his Honor in Council much better omitted.

6. At any rate, if adopted, his Honor in Council thinks it should be expressed in the most general terms possible.

The special proviso suggested in your letter would, he thinks, have an effect the contrary of what is intended, for by saving some specified attachments it would cast a doubt on others no less warranted by law; for example, seizures by landholders, under Regulation XVII. of 1793, by officers of justice or revenue, under the general Regulations, &c.

7. The President in Council will be glad to be favoured with the opinion of the judges, as to the absolute necessity of a proviso of this sort; he directs me to mention that this point has not been noticed by the judges of the Sudder court, at Allahabad. If, upon full consideration, it be held that a proviso is absolutely necessary to save lawful processes, the President in Council would propose to word it as entered on the margin.

"And it is hereby provided that nothing in this Act contained shall affect the legal exercise of any right of attachment or seizure vested by law in any parties."

8. I am directed to forward herewith a copy of the correspondence which has taken place with the Sudder court at Allahabad, on the subject mentioned in this letter.

I have, &c.

Council Chamber
6 January 1840.

(signed) *J. P. Grant*,
Officiating Secretary to Government of India.

(No. 30.)

From *J. P. Grant*, Esq. Officiating Secretary to the Government of India, to *M. Smith*, Esq. Officiating Register to the Sudder Dewanny Adawlut, Allahabad. Consultations. 6 Jan. 1840. No. 40.

Sir,

I AM directed by the Honourable the President in Council, with reference to your letter, No. 1725, of the 22d November last, to request that you will lay before the judges for their information, and any remarks that may seem requisite, the accompanying amended draft of an Act for preventing affrays concerning the possession of land, &c., read for the second time in Council this day. Legislative.

2. The judges will observe, with advertence to the first suggestions contained in your letter, that it is thought advisable to repeal completely the Regulations to which you have alluded. The President in Council believes the penal provisions of those Regulations to have been, in practice, almost entirely dead letter, and he conceives them to be open to objections of principle. His Honor in Council is aware that Regulation I. of 1822, Sect. 3, speaks of "affrays as defined in Regulation XLIX. of 1793, and Regulation XXXII. of 1803;" but on referring to those Regulations, he does not perceive that they contain any definition of the word "affray;" and even supposing those Regulations actually to define or explain that word, he conceives that their repeal cannot in any way affect the meaning of the word as used in later Regulations in the same sense.

3. The suggestions conveyed in the latter part of your letter, as they relate to a proposed change of the process of the civil courts in regular suits, need not be taken up in connexion with the Act now under discussion.

4. I am directed to forward herewith a copy of the correspondence which has taken place with the Sudder court at Calcutta, on the subject mentioned in this letter.

I have, &c.

Fort William,
6 January 1840.

(signed) *J. P. Grant*,
Officiating Secretary to Government of India.

(No. 34.)

From *J. P. Grant*, Esq. Officiating Secretary to the Government of India, to *T. H. Maddock*, Esq. Secretary to the Government of India, with the Governor-general. Consultations. 6 Jan. 1840. No. 41.

Sir,

I AM directed by the Honourable the President in Council to forward to you, to be laid before the Right hon. the Governor-general of India, the accompanying printed copy of the draft of a proposed amended Act for preventing affrays concerning the possession of land, and for providing relief in cases of forcible dispossession within the presidency of Fort William, in Bengal, which has been read in Council for the second time on this date, and will be published in the Calcutta Gazette for general information. Legislative Dep.

Copies of papers connected therewith, as noted on the margin, are also herewith forwarded. If his Lordship approve of the proposed enactments, you are requested to procure his further assent to its being passed without any material alteration.

Letter from Secretary to the Government of Bengal, dated 12 November 1839, with Enclosures.
Minute by Mr. Amos, dated 20 November 1839.
Letter from the Officiating Secretary to the Sudder Court, dated 22 Nov. 1839, with Enclosures.
Note by Mr. Officiating Secretary Grant, dated 10 December 1839.
Letter to Register of the Sudder Court, at the Foujdarry and at Allahabad, dated 6 Jan. 1840.

I have, &c.

Fort William,
6 January 1840.

(signed) *J. P. Grant*,
Officiating Secretary to Government of India.

(No. 204.)

Consultations. 17 Feb. 1840. No. 16.

From *J. Hawkins*, Esq. Register of Sudder Dewanny Adawlut, to *J. P. Grant*, Esq. Secretary to the Government of India, in the Judicial Department.

Sir,

Sudder Dewanny Adawlut.
Present:—R. H. Rattray, C. Tucker and E. Lee Warner, Esqrs. Judges; A. Dick and J. F. M. Reid, Esqrs. Temporary Judges.

I AM directed to acknowledge the receipt of your letter, No. 47, dated 6th instant, together with its enclosures, regarding the proposed Act for preventing affrays concerning the possession of land, and for providing relief in cases of forcible dispossession; and to request in reply, that you will submit the following observations on the subject for the consideration of his Honor the Vice-president in Council.

2. With reference to the observations conveyed in your third and following paragraphs, I am instructed to observe, that as the several provisions which recognise the right of dispossession or attachment by landholders and others, adverted to in the third paragraph of my letter, No. 2915, to the address of Mr. Secretary Halliday, are not repealed by the proposed Act, the court do not consider a proviso of the nature previously suggested to be absolutely necessary; but they are of opinion that the proviso entered in the margin, at paragraph 7 of your letter, would obviate all doubt, and render the Act much more complete; and they would accordingly recommend its adoption.

3. Had it not been for the decided opinion expressed by his Honor in Council in the second paragraph of your letter to the Register of the Allahabad court of the 6th instant, as to the objectionable character of the penal provisions of Regulation XLIX. of 1793, the court would have suggested the expediency of re-considering that part of the proposed Act which provides for the entire repeal of that Regulation. The Regulation contains three provisions, which appear to the court to be important, and not altogether of an useless or objectionable tendency. The first of these is, that any party claiming land who employs force to obtain possession, forfeits his title to the disputed property; the second authorizes the punishment of both parties, should both have recourse to illegal means, and the confiscation of the property itself which is the subject of contention; and the third declares the liability to punishment of a party instigating or conniving at an affray, though not present at its occurrence. The forfeiture of all right to the property by the aggressing party, and the liability of the property itself to confiscation, will of course be superseded by the repeal of Regulation XLIX. of 1793. The Mahomedan law will probably provide for the punishment of parties concerned in an affray, whether actually or constructively present; but the court are apprehensive that the repeal of the law which contains express declarations to that effect, without the introduction of some similar provision in the repealing enactment, may lead to misconception and serious evil.

I have, &c.

Fort William,
17 January 1840.

(signed) *J. Hawkins*, Register.

Consultations. 17 Feb. 1840. No. 17.

From *T. H. Maddock*, Esq. Secretary to the Government of India, with the Governor-general, to *J. P. Grant*, Esq. Officiating Secretary to the Government of India, Fort William.

Sir,

Legislative.

THE Governor-general having approved the provisions of the amended proposed Act for preventing affrays concerning the possession of lands, and for providing relief in cases of dispossession, received with your letter, No. 34, dated the 6th instant, I am desired to enclose his Lordship's assent in the usual form to pass that Act into law.

I have, &c.

Camp, Nuddee Gaon,
23 January 1840.

(signed) *T. H. Maddock*,
Secretary to the Government of India,
with the Governor-general.

ASSENT of the Right honourable the Governor-general; Camp, Nuddy Gaon, dated 23 January 1840.

Consultations. 17 Feb. 1840. No. 18. Enclosure. Legislative Dep.

I DO hereby, under section 70, 3 & 4 Will. 4, c. 85, give my assent to the proposed amended Act for preventing affrays concerning the possession of land, and for providing relief in cases of forcible dispossession within the presidency of Fort William, in Bengal, received from the Honourable the President in Council in Mr. Officiating Secretary Grant's letter, No. 34, dated the 6th instant.

(signed) *Auckland.*

(No. 190.)

From *M. Smith*, Esq. Officiating Register of Sudder Court, Allahabad, to *J. P. Grant*, Esq. Officiating Secretary to the Government of India, Fort William.

Consultations. 17 Feb. 1840. No. 19.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 30, dated 6th instant, enclosing an amended draft of a proposed Act for preventing affrays concerning the possession of land, and for providing relief in cases of forcible dispossession, together with the transcript of correspondence thereon with the Nizamut Adawlut in Calcutta, as connected with the same subject.

N. A. N. W. P. Present:—W. Lambert, Esq., Judge.

2. It is to be regretted that this communication has been made at a period when only one judge is present with the court, more especially since the early date fixed on for the reconsideration of the amended draft (the first meeting of the council after the 6th proximo,) precludes the postponement of a reply till the arrival of other judges, a measure which would otherwise have been more satisfactory to the court.

3. Adverting, however, to what more immediately calls for an expression of their opinion in reference to the correspondence, copy of which has accompanied your letter, the court have instructed me to state that they consider it would be advisable to comprehend in the Act the proviso advocated by the Calcutta court, and worded as in the margin of paragraph 7 of your letter to the register of that court, dated 6th instant.

I have, &c.

(signed) *M. Smith*,
Officiating Register.

Allahabad, 31 January 1840.

ACT, No. IV., of 1840.

Passed by the Right honourable the Governor-general of India in Council, on 17 February 1840.

Consultations. 17 Feb. 1840. No. 20.

AN ACT for preventing Affrays concerning the Possession of Land, and for providing Relief in cases of forcible Dispossession, within the Presidency of *Fort William*, in *Bengal*.

I. WHEREAS it is expedient to remove doubts which have arisen upon the interpretation of Regulation XV. of 1824, and to amend the law for preventing affrays concerning the possession of land, and for giving relief in cases of forcible dispossession, and to extend it to cases not hitherto provided for, and to make it applicable to persons of every class or description, whether British-born subjects or others;

It is hereby enacted, that Regulation XLIX. of 1793, Regulation XIV. of 1795, Regulation XXXII. of 1803, Section 5, Regulation VI. of 1813, Regulation XV. of 1824, and Regulation II. of 1829, of the Bengal Code, together with so much of any Regulations as extends any of the above Regulations, or parts of Regulations, to any places within the Presidency of Fort William, in Bengal, be repealed.

No. VII.
Suppression of Affrays concerning Indigo.

II. And it is hereby enacted, that whenever any magistrate or other officer exercising the powers of a magistrate may be certified that a dispute likely to induce a breach of the peace exists concerning any land, premises, water, fisheries, crops, or other produce of land, within the limits of his jurisdiction, he shall record a proceeding, stating the grounds of his being so certified, and shall call on all parties concerned in such dispute, (whether proprietors, dependent talookdars, farmers, under-farmers, ryots, or other persons,) to attend his court, in person or by agent, within a reasonable time, and to give in a written statement of their respective claims as respects the fact of actual possession of the subject of dispute. And the magistrate or other officer as aforesaid shall, without reference to the merits of the claims of any party to a right of possession, proceed to inquire what party was in possession of the subject of dispute when the dispute arose, and after satisfying himself upon that point, shall record a proceeding declaring the party whom he may decide to have been in such possession to be entitled to retain possession, until ousted by due course of law, and forbidding all disturbance of possession until such time; and if necessary the magistrate or other officer as aforesaid shall put such party into possession, and maintain him in possession, until the rights of the parties disputing be determined by a competent court.

III. And it is hereby enacted, that if the magistrate or other officer as aforesaid shall, in the cases mentioned in section 2 of this Act, be unable to satisfy himself as to what party was in possession of the subject of dispute when the dispute arose, he may attach the subject of dispute until the rights of the parties be determined by a competent court, giving the collector information of the attachment; and if the subject of dispute be land, the provisions of Regulation V. of 1827, regarding attachment by order of a zillah or city court, shall apply to attachments by order of a magistrate or other officer as aforesaid made under this section.

IV. And it is hereby enacted, that if any party shall complain to a magistrate or other officer as aforesaid, that he has been, without authority of law, forcibly dispossessed of any land, premises, water, fisheries, crops, or other produce of land within the jurisdiction of such magistrate or other officer as aforesaid, whether the same were possessed by such party as proprietor, dependent talookdar, farmer, under-farmer, ryot, or otherwise, the magistrate or other officer as aforesaid shall require the party or parties complained against, and any other parties concerned, to appear and make defence, in person or by agent, within a reasonable time; and if, after the examination of the necessary witnesses and documents, the complaint appears to him to be substantiated, he shall record a proceeding ordering the party complaining to be put again into possession of the subject of dispute, and maintained in possession until the right to possession be determined by a competent court; provided that no such order shall be passed unless the party complaining of having been so dispossessed prefer his claim within one month from the time of such dispossession.

V. And it is hereby enacted, that if, in cases instituted under this Act, the subject of dispute be newly-formed land, whereof it shall appear to the magistrate or other officer as aforesaid that no party has ever had possession, the magistrate or other officer as aforesaid shall award possession to the party to whom the right of possession belongs according to law or custom, and shall maintain that party in possession until the right to possession be determined by a competent court.

VI. And it is hereby enacted, that if a dispute arises concerning the right of use of any land or water, the magistrate or other officer as aforesaid within whose jurisdiction the subject of dispute lies may inquire into the matter, and if it shall appear to him that the subject of dispute was open to the use of the public, or of any person, or of any class of persons, the said magistrate or other officer may order that possession thereof shall not be taken or retained by any party to the exclusion of the public, or of such person, or of such class of persons, as the case may be, until the party claiming such possession shall obtain the decision of a competent court adjudging him to be entitled to such exclusive possession. Provided that the magistrate or other officer as aforesaid shall not pass any such order as aforesaid, if the matter be such that the right of use is capable of being exercised at all times of the year, unless that right shall have been ordinarily exercised within

No. VII.
Suppression of Affrays concerning Indigo.

within three months from the date of the institution of the inquiry, or in cases where the right of use exists at particular seasons, unless such right has been exercised without discontinuance before the dispossession of which complaint is made.

VII. And it is hereby enacted, that any person opposing by force the execution of an order for possession or use, given under this Act, or refusing obedience thereto, or knowingly contravening the same, as long as it shall remain in legal force, shall, together with all persons aiding and abetting, be liable, on conviction before a magistrate or other officer with the powers of a magistrate, to be sentenced to simple imprisonment for a term not exceeding six months, or to fine not exceeding 200 rupees, commutable, if not paid, to a period of simple imprisonment not exceeding six months, or to both imprisonment and fine, as aforesaid.

VIII. And it is hereby enacted, that all orders passed under this Act shall be appealable in the usual manner, under the Regulations and Laws that are or may be in force relating to appeals from the orders of magistrates or other officers exercising the powers of magistrates.

IX. And it is hereby enacted, that in cases instituted under this Act the magistrate or other officer as aforesaid is authorized, with the consent of all the parties, to refer the matter in dispute, so far as it is cognizable under this Act, to an arbitrator or arbitrators for decision, whose award shall be executed as if it were the award of such magistrate or other officer as aforesaid.

X. And it is hereby provided, that nothing in this Act contained shall affect the legal exercise of any right of attachment or seizure vested by law in any parties.

XI. And it is hereby further provided, that this Act shall not extend to any place beyond the limits of the Presidency of Fort William in Bengal, or to the settlements of Prince of Wales's Island, Singapore, or Malacca, or to any place situated within the local limits of the jurisdiction of Her Majesty's Supreme Court at Calcutta.

(No. 665.)

From *R. N. C. Hamilton*, Esq. Officiating Secretary to the Lieutenant-governor, North Western Provinces, to *T. H. Maddock*, Esq. Secretary to the Government of India, Legislative Department, Fort William.

Consultations. 23 March 1840. No. 15.

Sir,

With reference to Mr. Officiating Secretary Grant's letter, No. 501, dated the 16th September last, I am directed by the Honourable the Lieutenant-governor to transmit, for the information of the Right honourable the Governor-general of India in Council, the annexed copy of a letter this day addressed to the Officiating Register of the Nizamut Adawlut at Allahabad.

Judicial Dep.

I have, &c.

(signed) *R. N. C. Hamilton*,
Officiating Secretary to the Lieutenant-governor,
Camp, Mynpoorey, 24 February 1840. North Western Provinces.

(No. 664.)

From *R. N. C. Hamilton*, Esq. Officiating Secretary to the Lieutenant-governor, North Western Provinces, to *M. Smith*, Esq. Officiating Register, Nizamut Adawlut, North Western Provinces, Allahabad.

Sir,

I am directed by the Honourable the Lieutenant-governor to acknowledge the receipt of your letter, No. 1724, dated 22d November last, submitting the court's observations

Judicial Dep.

No. VII.
Suppression of Affrays concerning Indigo.

observations on the proposed Act for preventing affrays concerning the possession of land, and for providing relief in cases of forcible dispossession.

2. The court having forwarded a copy of their communication direct to the Governor of India, no further orders appear to be necessary at present from the Lieutenant-governor; but the court can revive the subject discussed in paragraph 3 to end of your letter, should it be expedient.

I am, &c.

(signed) *R. N. C. Hamilton,*
Officiating Secretary to the Lieutenant-governor,
North Western Provinces.

Camp, Mynpoorey, 24 February 1840.

(True copy.)

(signed) *R. N. C. Hamilton,*
Officiating Secretary to the Lieutenant-governor,
North Western Provinces.

— (B.) No. I. —

(B.) No. 1.
Relative to Printing the Report on Slavery.

RELATIVE TO PRINTING THE REPORT ON SLAVERY.

(No. 8.)

From *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission, to *T. H. Maddock*, Esq. Secretary to Government of India, Legislative Department.

Legis. Cons. 27 April 1840. No. 8.

Sir,

THE Report at large on the state of Indian Slavery, which the Law Commissioners will submit to the Right honourable the Governor-general of India in Council, will include,

I. A review of the Evils resulting from Slavery in India, founded on the Evidence taken by the Law Commission, and Official Documents to which they have had access, with suggestions of remedial measures.

II. A Digest of such Evidence and Documents, divided into Sections, applicable severally to the Provinces dependent on the three Presidencies.

III. Appendix, containing Evidence taken and Official Documents collected by the Law Commission, and not yet printed.

2. The whole, it is computed, will occupy about 1,850 pages of printing, of which 140 are now printed, being part of the third of the above subdivisions; the remaining part of the same third subdivision will occupy about 73 printed pages.

3. On a reference to the superintendent of the Military Orphan Press, the Law Commissioners find, as appears by the letter hereunto annexed, that to pass through the press the whole of the imprinted matter will require the delay of about four or five months, and to effect it in that time there must be no interruption, and the press must have extra printers. It is apprehended that the first and second of the above subdivisions will, from the nature of them, as consisting of composition, and not of official returns, require much more correction than the third part.

4. To obviate the inconvenience of the delay, the Law Commissioners request permission to employ another press in printing simultaneously all or such parts of the two first subdivisions as may be found convenient.

They solicit this permission, because they understand that the orders of Government require that all public printing business be sent to the Military Orphan Press.

I have, &c.

Indian Law Commission,
4 April 1840.

(signed) *J. C. C. Sutherland*,
Secretary.

(B.) No. I. Relative to Printing the Report on Slavery.

From *G. H. Huttmann*, Esq. Superintendent Orphan Press, to *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission.

Dear Sir,

RECKONING, as you say, the Appendix now passing through the press to make 1,800 or 1,900 pages foolscap, and no further interruptions occurring either in supply of copy or detention of proofs, I calculate the whole can be got out in four or five months. Additional hands shall be put on, and not an hour lost on the work.

I am, &c.

Orphan Press,
4 April 1840.

(signed) *G. H. Huttmann*,
Superintendent.

(True copy.)

(signed) *J. C. C. Sutherland*,
Secretary.

(No. 210.)

Legis. Cons. 27 April 1840. No. 9.

From *T. H. Maddock*, Esq. Secretary to the Government of India, to *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 8, dated the 4th instant, and to inform you in reply, that the Right honourable the Governor-general in Council sees no objection to the employment of another press for printing the Report on Indian Slavery, should the Military Orphan Press already engaged on this work be unable to complete it within the requisite time; but if the latter press be able to complete the work within the time and in the manner desired by the Law Commissioners, it is his Lordship's opinion that the preference should be given to it.

I have, &c.

Council Chambers,
27 April 1840.

(signed) *T. H. Maddock*,
Secretary to Government of India.

—(B.) No. II.—

(B.) No. II. Questions which occupy the immediate Attention of the Commissioners.

QUESTIONS WHICH OCCUPY THE IMMEDIATE ATTENTION OF THE COMMISSIONERS.

(No. 17.)

Legis. Cons. 3 August 1840. No. 2.

From *J. C. Sutherland*, Esq. Secretary to the Law Commission, to *F. J. Halliday*, Esq. Junior Secretary to the Government of India, Legislative Department.

Sir,

THE Law Commission having now so far completed their Report upon Slavery in India, as to be released from constant attention to it, think that it may be satisfactory to Government to know upon what other subjects they are at present occupied. They therefore direct me to state, for the information of Government, that they are preparing Reports; viz.—

1. Two Reports arising out of the petition of the East Indians. The first upon the substantive law to be applied in the Mofussil to that class of persons, and other classes whose legal condition may be considered doubtful. The second a Report upon the judicature by which the causes, civil and criminal, of those classes

(B.) No. II.
Questions which occupy the immediate Attention of the Commissioners.

classes are to be decided, involving the question of the introduction of juries, or some modification of them, into the Mofussil.

2. A report upon judicature and procedure in the places subject to the jurisdiction of Her Majesty's courts. This will comprise the report (which has been already announced) upon the courts of requests, that upon the introduction of *vivâ voce* examinations in equity, and that upon the recorder's court in the Straits. These three subjects appear to us to form properly so many chapters of a report bearing the title above stated, and we propose, therefore, to treat them in that manner, although, in the references which called our attention to them, they were either presented separately, or in combinations different from that which seems to us the most methodical and the most convenient.

3. The Law Commissioners have again had under consideration the question of abolishing the Provincial Courts of Appeal and Circuit under the Presidency of Madras, with reference to the letter from Mr. Officiating Secretary Grant, dated 3d June 1839, and are about to submit a report on the subject. No. 224.

4. As connected with the last-mentioned subject, they have resumed the consideration of the question referred to them by Mr. Secretary Macnaghten's letter, dated the 4th July 1836, "of the powers to be confided to single judges of the Sudder Courts," and will submit their sentiments upon it at an early period. In the meantime they request that the Right honourable the Governor-general in Council will be pleased to communicate to them any reports that may be before Government bearing upon the question, with reference to the state of business in the Sudder Dewanny and Nizamut Adawlut at Calcutta, or Bombay, or elsewhere.

His Lordship in Council is aware that the Law Commission had consulted the principal judicial authorities, with a view to ascertain what objections might exist to a law legalizing the re-marriage of Hindoo widows. Such law it was hoped would tend to diminish the crime of child-murder. The inquiry has produced a discussion on the legality of such re-marriages under the Hindoo law and usage in some places. The Law Commissioners are preparing a short report, showing the result of their inquiries. *Vide* Letter of the Law Commission, of 4 July 1837. No. 41.

I have, &c.

Indian Law Commission, 11 July 1840. (signed) *J. C. Sutherland*, Secretary.

(No. 339.)

From *F. J. Halliday*, Esq. Junior Secretary to the Government of India, to *J. C. Sutherland*, Esq. Secretary to the Indian Law Commission. Legis. Cons. 3 August 1840. No. 3.

Sir,

I AM directed by the Right honourable the Governor-general in Council to acknowledge the receipt of your letter (No. 17) dated the 11th instant, and in reply to state, that his Lordship in Council will look with interest for reports from the Commission, upon the subjects now before them. Legislative Dep.

2. It is very desirable that the Commission should speedily place the Government in possession of their views upon those amendments in the law of procedure, which must take a prominent part in all extensive legal reforms; and it is obvious that much of what is noticed in your first section, and the whole of the subjects of the 3d and 4th, are but portions of the code of procedure, and therefore belong to that class of questions which, in his Lordship's opinion, require your earliest attention.

3. Upon understanding that the report alluded to under your second head will be furnished at no distant date, his Lordship in Council approves the combination of subjects proposed by the Commission; but I am desired to observe, that the subjects which it is intended to combine in one report, are each, in his Lordship's estimation, of sufficient urgency and importance to require separate and distinct consideration, while the time which has already elapsed since they were first proposed to the Commission, especially in the case of the court of requests, and the great necessity which has long been felt for the improvement and extension of that court, render it very desirable that the propositions of the Commissioners should be matured, and laid before Government with as little

(B.) No. II.
Questions which occupy the immediate Attention of the Commissioners.

further delay as may be possible. Should it then be found that the plan of combining these, or any other portions of the code of procedure, in one general report, or in one or more comprehensive chapters of a general report, is likely to occasion such delay as to prevent the receipt of the report by Government before the termination of the present year (1840), his Lordship would decidedly prefer to receive reports on each subject separately, and in that case would suggest to the Commission the state of the court of requests as the first subject for their consideration.

4. Reference has been made, as recommended by the Commission, for information as to the state of business in the Sudder Dewanny and Nizamut Adawluts at the presidency, and the result of the reference will be made known to the Commission without loss of time. In the meantime the half-yearly report, from the 1st January to the 30th June 1839, received from the Presidency of Bombay, is forwarded herewith.

I have, &c.
(signed) *F. J. Halliday,*
Junior Secretary to the Government of India.

Council Chamber, 3 August 1840.

(No. 363.)

Legis. Cons. 3 August 1840. No. 4.

From *F. J. Halliday*, Esq. Junior Secretary to the Government of India, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal.

Sir,

Legislative Dep.

I AM directed to transmit to you for submission to the Right honourable the Governor of Bengal, the accompanying extract from a correspondence with the secretary to the Indian Law Commission, noted on the margin, and to request that, with the permission of his Lordship, the information therein required may be furnished for communication to the Commissioners.

Extract of Letter from Secretary of Indian Law Commissioners, of 11 July 1840.
Extract of Letter from Secretary of Indian Law Commissioners, of 3 August 1840.

I have, &c.
(signed) *F. J. Halliday,*
Junior Secretary to the Government of India.

Council Chamber, 3 August 1840.

(No. 1461.)

Judicial Cons. 28 Sept. 1840. No. 3.

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *F. J. Halliday*, Esq. Junior Secretary to the Government of India, Judicial Department.

Sir,

Judicial Dep.

IN compliance with the requisition conveyed by your letter (No. 363) dated the 3d ultimo, with its enclosure, I am directed by the Right honourable the Governor of Bengal to transmit, for the information of the Law Commissioners, the accompanying Report, showing the state of business in the Courts of Sudder Dewanny and Nizamut Adawlut, according to the latest returns received in this office.

I have, &c.
(signed) *F. J. Halliday,*
Secretary to the Government of Bengal.

Fort William, 1 September 1840.

Judicial Consultations, 28th September 1840.

No. 4.—Enclosure.

(No. 13.)

STATEMENT showing the Number of APPEALS preferred to the Nizamut Adawlut from Sentences passed by the Commissioner of Circuit and Session Judges in Criminal Trials, and from Orders passed by the Commissioner in Cases of a miscellaneous nature, during the Month of July 1840, with the Orders passed thereon, together with an Abstract Statement of Criminal Trials decided and disposed of during the Month.

	From Sentences of Commissioner of Circuit and Sessions Judges on Criminal Trials, including the Cases called for on Inspection of the Statement.						From Orders passed by the Commissioners in Cases of a Miscellaneous nature.								
	1. Pending on the 1st July 1840.	2. Referred during the Month.	3. TOTAL.	4. Order, if Confirmed.	5. Order, if Modified or Reversed.	6. Pending at the end of the Month.	7. Pending on the 1st July 1840.	8. Referred during the Month.	9. TOTAL.	10. Order, if Confirmed.	11. Appeal Rejected as not cognizable.	12. Order, Modified or Reversed.	13. Withdrawn from File.	14. Cases referred for the Order of Government.	15. Pending at the end of the Month.
11th Division. Commissioner of Circuit	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
11th Division. Session Judge of Shahabad	–	3	3	–	3	–	–	1	1	–	–	–	–	–	1
11th Division. Ditto – – Sarun	1	–	1	–	–	1	4	–	4	–	–	1	1	–	2
11th Division. Ditto – – Behar	–	–	–	–	–	–	2	1	3	–	–	–	1	–	2
11th Division. Ditto – – Patna	–	1	1	–	–	–	5	5	10	2	–	–	1	–	7
12th Division. Commissioner of Circuit	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
12th Division. Session Judge of Tirhoot	–	–	–	–	–	–	–	2	2	–	–	–	–	–	2
12th Division. Ditto – – Bhaugulpore	1	1	2	–	–	2	5	2	7	1	–	1	–	–	5
12th Division. Ditto – – Purneah	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
13th Division. Commissioner of Circuit	–	–	–	–	–	–	–	1	1	–	–	–	–	–	1
13th Division. Session Judge of Dinagepore	1	2	3	–	–	3	2	1	3	1	–	–	–	–	2
13th Division. Ditto – – Rajeshye	1	2	3	–	–	3	3	1	4	1	–	–	2	–	1
13th Division. Ditto – – Rungpore	1	–	1	1	–	–	2	–	2	1	–	–	–	–	1
14th Division. Commissioner of Circuit	–	–	–	–	–	–	–	1	1	–	–	–	–	–	1
14th Division. Session Judge of Moorshedabad	1	–	1	–	–	1	1	1	2	1	–	–	–	–	1
14th Division. Ditto – – Beerbhoom	–	–	–	–	–	–	3	–	3	1	–	–	1	–	1
14th Division. Ditto – – Nuddea	–	–	–	–	–	–	2	3	5	–	–	1	1	–	3
14th Division. Ditto – – Burdwan	1	1	2	–	–	2	2	3	5	2	–	–	–	–	3
15th Division. Commissioner of Circuit	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
15th Division. Session Judge of Mymensing	1	–	1	–	–	1	4	5	9	5	–	1	1	–	2
15th Division. Ditto – – Dacca	3	–	3	–	–	3	5	2	7	2	–	1	2	–	2
15th Division. Ditto – – Backergunge	1	–	1	–	–	1	3	8	11	4	–	1	3	–	3
15th Division. Ditto – – Sylhet	–	–	–	–	–	–	2	–	2	–	–	–	–	–	2
16th Div. Commissioner of Circuit	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
16th Div. Session Judge of Chittagong	2	–	2	1	–	2	–	2	2	–	–	1	1	–	–
16th Div. Ditto – – Tipperah	1	1	2	1	–	1	2	1	3	1	–	–	–	–	2
17th Division.—Commissioner of Circuit	–	–	–	–	–	–	–	1	1	–	–	–	–	–	1
18th Division. Commissioner of Circuit	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
18th Division. Session Judge of Jessore	1	1	2	–	–	2	1	3	4	–	–	–	1	–	3
18th Division. Ditto – – 24 Pergunnahs	1	–	1	–	–	1	–	6	6	1	–	–	2	–	3
18th Division. Ditto – – Hooghly	–	1	1	–	–	1	–	–	–	–	–	–	–	–	–
19th Div. Commissioner of Circuit	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
19th Div. Session Judge of Midnapore	3	2	5	–	–	5	4	2	6	–	–	–	4	–	2
19th Div. Ditto – – Cuttack	–	1	1	–	1	–	–	–	–	–	–	–	–	–	–
Governor-general's Agent at Hazareebaugh	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Commissioner of Arracan	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Commissioner of Tenasserim Provinces	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
Political Agent of Cheerapoonjee	–	–	–	–	–	–	–	–	–	–	–	–	–	–	–
TOTAL	20	16	36	3	4	29	52	52	104	23	–	7	21	–	53

ABSTRACT STATEMENT of CRIMINAL TRIALS decided and disposed of by the Court of Nizamut Adawlut for the Lower Provinces, in the Month of July 1840, and of the Number depending at the end of that Month.

	Trials referred under the Regulations.	Trials called for.	TOTAL.
Depending on the 1st July 1840	77	20	97
Received in the month of July 1840	42	16	58
TOTAL	119	36	155
Decided in the month of July 1840	35	7	42
Depending on the 1st August 1840	84	29	113

Of the 42 trials decided during the month—

Mr. Rattray recorded his opinion on		9
Mr. Tucker	ditto	8
Mr. Smyth	ditto	24
Mr. Lee Warner	ditto	12
Mr. Dick	ditto	12
Mr. Reid	ditto	—

(signed) *J. Hawkins*, Register.

(B.) No. II.
Questions which occupy the immediate Attention of the Commissioners.

ABSTRACT STATEMENT of CAUSES disposed of by the Presidency Court of Sudder Dewanny Adawlut in the Month of July 1840, and of the Number depending at the end of that Month.

	Suits instituted prior to the 1st January 1838.						Instituted subsequently to the 1st January 1838.						Received from the late Calcutta, Dacca, Moorshedabad, and Patna Courts of Appeal.						REMARKS.
	Regular Appeal.			Special Appeal.			Regular Appeal.			Special Appeal.			Regular Appeal.			Special Appeal.			
	Decided on Trial.	Dismissed on Default.	Adjusted or Withdrawn.	Decided on Trial.	Dismissed on Default.	Adjusted or Withdrawn.	Decided on Trial.	Dismissed on Default.	Adjusted or Withdrawn.	Decided on Trial.	Dismissed on Default.	Adjusted or Withdrawn.	Decided on Trial.	Dismissed on Default.	Adjusted or Withdrawn.	Decided on Trial.	Dismissed on Default.	Adjusted or Withdrawn.	
By Messrs. R. H. Rattray, D. C. Smyth, F. Lee Warner, and A. Dick	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
By Messrs. D. C. Smyth, E. Lee Warner, and C. Tucker	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
By Messrs. C. Tucker, R. H. Rattray, and E. Lee Warner	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
By Messrs. C. Tucker, E. Lee Warner, and A. Dick	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
By Messrs. T. P. B. Biscoe, E. Lee Warner, and C. Tucker	-	-	-	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
By Messrs. T. P. B. Biscoe, A. Dick, and E. Lee Warner	1	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
By Messrs. T. P. B. Biscoe, E. Lee Warner, and D. C. Smyth	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
By Messrs. E. Lee Warner and R. H. Rattray	-	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
By Messrs. E. Lee Warner and J. R. Hutchinson	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
By Messrs. A. Dick and E. Lee Warner	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
By Messrs. T. P. B. Biscoe and E. Lee Warner	1	-	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
By Messrs. J. F. M. Reid and D. C. Smyth	-	-	-	-	-	-	-	-	-	11	-	-	-	-	-	-	-	-	
By Mr. R. H. Rattray	1	-	-	1	-	-	-	-	-	1	-	-	-	-	-	-	-	-	
By Mr. D. C. Smyth	6	-	-	3	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
By Mr. A. Dick	4	-	-	4	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
By Mr. E. Lee Warner	4	-	-	4	-	-	-	-	-	1	-	-	-	-	-	-	-	-	
By Mr. T. P. B. Biscoe	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
By Mr. J. F. M. Reid	-	1	-	-	-	-	-	-	-	3	-	-	-	-	-	-	-	-	
TOTAL - - - -	24	1	-	18	-	-	13	2	-	6	-	-	-	-	-	-	-	-	
TOTAL Amount or Value - *Sicca Rs.*	5,28,034	4,757	-	24,546	-	-	31,232	1,02,452	-	12,226	-	-	-	-	-	-	-	-	

	Regular Appeal.	Special Appeal.	Decided on Trial.		Dismissed on Default.		Adjusted or Withdrawn.		Pending on the last Day of the Month.		Ready for Hearing.
			Regular.	Special.	Regular.	Special.	Regular.	Special.	Regular.	Special.	
Suits instituted prior to the 1st January 1838, and pending on the 1st July 1840 - - -	192	69	24	18	1	–	–	–	167	51	–
Suits instituted subsequently to the 1st January 1838, pending on the above date - - -	284	160	13	6	2	–	–	–	269	154	–
Received from the late Calcutta, Dacca, Moorshedabad, and Patna Courts of Appeal - - -	–	1	–	–	–	–	–	–	–	1	–
Total pending on the 1st July 1840	476	230	–	–	–	–	–	–	436	206	–
Received during the month of July 1840 - - - - - -	29	15	–	–	–	–	–	–	29	15	–
	505	245	37	24	3	–	–	–	465	221	–
	750		64						686		225

STATEMENT showing in how many MISCELLANEOUS CASES Orders passed by the Presidency Court of Sudder Dewanny Adawlut during the month of July 1840.

	Proceedings held and Orders passed in Miscellaneous Cases.	Miscellaneous Petitions.	PETITIONS OF SPECIAL APPEALS.				GRAND TOTAL.
			Admitted after Hearing.	Rejected after Hearing.	Struck off for Default, and other Irregularities.	Total Disposed of.	
By Mr. R. H. Rattray -	- - -	3	3	2	- -	5	8
By Mr. D. C. Smith -	13	91	3	8	- -	11	115
By Mr. C. Tucker - -	3	3	2	- -	- -	2	8
By Mr. A. Dick - -	13	7	1	- -	- -	1	21
By Mr. E. Lee Warner -	23	5	2	- -	1	3	31
By Mr. T. P. B. Biscoe -	- - -	54	11	6	- -	17	71
By Mr. J. F. M. Reid -	414	100	- -	- -	- -	- -	514
TOTAL - - -	466	263	22	16	1	39	768

(signed) *J. Hawkins*, Register.

(No. 141.)

From *F. J. Halliday*, Esq. Junior Secretary to the Government of India, to *J. C. Sutherland*, Esq. Secretary to the Indian Law Commission.

Judicial Cons. 28 Sept. 1840. No. 5.

Sir,

WITH reference to the 4th para. of my letter (No. 339) of the 3d ultimo, I am directed by the Governor-general in Council to transmit to you, for the information of the Indian Law Commissioners, copy of a Report showing the state of business in the Courts of Sudder Dewanny and Nizamut Adawlut at the presidency, according to the latest returns received.

Judicial Dep.

I have, &c.

(signed) *F. J. Halliday*,
Junior Secretary to the Government of India.

Council Chamber,
28 September 1840.

(B.) No. III.
Relative to Affrays concerning Indigo and Pounding Cattle.

—(B.) No. III.—

RELATIVE TO AFFRAYS CONCERNING INDIGO AND POUNDING CATTLE.

(No. 2.)

Legis. Cons. 28 Dec. 1835. No. 29.

From *W. H. Macnaghten*, Esq. Secretary to the Government of India, to *F. Millett*, Esq. Secretary to the Indian Law Commission.

Sir,

Legislative.

I AM directed by the Hon. the Governor-general of India in Council to acknowledge the receipt of your letter, dated the 13th ult., and the Minutes of the President and members of the Law Commission which accompanied it, on the several points referred for their consideration in my communication of the 25th of May last.

2. In reply, I am desired to communicate to you for the information of the Commissioners the following observations.

3. The Commissioners seem to be agreed as to the propriety of rescinding such part of Clause 2, Section 15, Regulation V. 1831, as prohibits sudder ameens from trying suits in which Europeans and Americans are parties; and similarly of Clause 1, Section 18, of the same Regulation, regarding principal sudder ameens. The Act of 3 & 4 William 4, chapter 85, section 87, removing the various disabilities therein described, has virtually cancelled the regulation last cited. But it is in the contemplation of the Governor-general in Council to enact a declaratory law on this point, as well as to provide that all Europeans or Americans who may be appointed to any office under Government, shall be liable, as regards their conduct while in office, to the same rules as are applicable to servants of the Government who are natives of India. It appears to the Governor-general in Council to be expedient and proper that Europeans should be made subject to the jurisdiction of the sudder ameen's court in like manner as natives are now subject. The fact of their being thereby deprived of an appeal to the Supreme Court, which has been noticed and discussed in the Minutes of the Commissioners, would not appear to constitute a sufficient objection to the measure, and a provision will be introduced for giving effect to it accordingly.

4. With regard to the second point, viz. "the propriety of rescinding the rule which gives to a person advancing money for the cultivation of indigo plant, a lien on the crop," the Governor-general in Council is disposed to concur in the opinion expressed by the Honourable Mr. Macaulay, to the effect, "that the question is one in which the ryot appears to be very little interested," inasmuch as it is of little consequence to him whether the indigo planter or the zemindar be the person who has a right of distraint, but if both have that right he is liable to double oppression and anxiety.

5. In my former communication it was observed, "that if this law was just and proper in regard to indigo concerns, it ought consistently to be extended to every sort of advance;" but the Governor-general in Council has seen reason to modify this opinion. There is undoubtedly a peculiarity in the cultivation of indigo rendering prompt measures necessary for the security of that species of property, which are not equally so for all other products. Under these circumstances, as the ryot would be little if at all benefited by the repeal of the privilege in question, as extensive injury might be entailed on the indigo planters if it were withdrawn without the substitution of some equivalent provision, and as the Governor-general in Council proposes to take into his consideration the means of saving the zemindar from suffering any pecuniary loss from the operation

(B.) No. III.
Relative to Affrays concerning Indigo and Pounding Cattle.

ration of that rule, he is not prepared to determine that it shall be altogether rescinded.

6. The Law Commissioners are unanimous as to the inexpediency of enacting a law for the more effectual suppression of affrays concerning indigo. The Governor-general in Council doubts not that this important subject in all its bearings will receive from the Law Commissioners that attentive deliberation which it so peculiarly demands.

7. As to the question of a peculiar law for the registration of indigo contracts, the Governor-general in Council is disposed to think, that it would be inexpedient, if not impracticable, (at least for any good purpose,) to compel the registration of all such contracts. The subject may, in the opinion of the Governor-general in Council, be safely left over till the Commission shall arrive at that stage of their labours when the consideration of a general system of registry can conveniently be taken up.

8. The Governor-general in Council is further of opinion, and chiefly for the reasons so ably stated by the Honourable Mr. Macaulay, that it would be inexpedient to fix any legal limit to the duration of indigo contracts; and as regards this branch of the subject, he is disposed to think that the indigo planter and the ryot should be at liberty to enter into such terms as they may consider best for their own advantage respectively.

9. I am desired to return to you the original papers noted in the margin, connected with the question of a law for the pounding of cattle, in order that they may be referred to when that question comes under the consideration of the Law Commission. They can be sent back to my office when they are no longer required by the Commission.

Extract from the General Department, of 9 Dec. 1839, covering letter from the Board of Customs, Salt and Opium, of the 19th Nov. 1833, with Enclosures.
Letter from the Register of the Sudder Dewanny Adawlut, N. W. P. of 16 May 1834, with 36 Enclosures.
Letter from Register of the Sudder Dewanny Adawlut, N. W. P. of 6 June 1834, with Enclosures.
Letter from Register of the Sudder Dewanny Adawlut, L. P. of 29 August 1834, with Enclosures.
Letter from Register of the Sudder Dewanny Adawlut, of 7 Nov. 1834.
Letter to the Register of the Nizamut Adawlut, at the Presidency, dated 16 Dec. 1833.

I have &c.
(signed) *W. H. Macnaghten,*
Secretary to the Government of India.

Council Chamber,
28 December 1835.

(No. 49.)

From *J. P. Grant*, Esq. Officiating Secretary to the Indian Law Commission, to *W. H. Macnaghten*, Esq. Secretary to the Government of India in the Legislative Department.

Legis. Cons. 17 August 1840. No. 10.

Sir,

I AM directed by the Indian Law Commissioners to request that you will submit to the consideration of the Right honourable the Governor-general of India in Council the following observations on the subjects noticed in the latter part of your letter to the address of Mr. Millett, dated the 28th of December 1835.

2. In the sixth paragraph of that letter, after noticing the unanimous opinion of the Law Commissioners, that it would be inexpedient to enact any law specifically for the more effectual suppression of affrays concerning indigo, you conveyed an intimation of the expectation of the Government that this important subject in all its bearings would receive from the Commission that attentive consideration which it deserves. I am now directed to report that this subject has again been taken up by the Commissioners during the preparation of the penal code lately submitted to Government, and has been maturely considered. The Law Commissioners are of opinion that everything can be effected by penal laws, towards the suppression of affrays of the nature in question, would be effected by the enactment of that code; in which, besides the provision of suitable penalties for committing extortion, trespassing, rioting, inflicting bodily hurt, or committing culpable homicide, as the case may be, a peculiar provision has been made, with a view to check an unnecessary resort to violent measures, in cases of a disputed right of possession, even on the part of a person defending a rightful claim.

sic. orig.

3. The chief peculiarity in these affrays is this, that they are supposed to be originated by parties who do not appear in them openly. The penal code would make such parties liable to the same punishment with those who are openly engaged in committing the offence. The detection of such parties, and their

(B.) No. III.
Relative to Affrays concerning Indigo and Pounding Cattle.

conviction, must depend greatly on the vigilance of the police, and the existence of reasonable rules of evidence. The vigilance of the police is of course matter for the sole consideration of the executive government, but the Law Commissioners hope shortly to submit for consideration a project of a law of evidence, such as they consider to be best adapted for the ascertainment of truth.

4. Whatever further provisions of law may be necessary, in order to the more effectual prevention of affrays of this sort, will be considered in connexion with the code of criminal procedure.

5. With respect to the question of enacting a law for the pounding of cattle, the Law Commissioners observe, that a part of this question has been disposed of by them, by the provisions in the penal code on the subject of trespass, by which the intentional driving of cattle on the property of another party would be a punishable offence. The rest of this question, together with the entire question of enacting a law to provide for the registration of deeds, including indigo contracts, must, as observed by the Honourable the late Governor-general of India in Council, lie over until these questions shall respectively arise in due course, during the regular progress of the labours of the Law Commission.

I have, &c.
(signed) *J. P. Grant*,
Officiating Secretary to the Indian Law Commission.

Indian Law Commissioners' Office,
11 July 1837.

(No. 2002.)

Legis. Cons. 17 August 1840. No. 11.

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *J. P. Grant*, Esq. Officiating Secretary to the Government of India, Judicial Department.

Sir,

Judicial Dep.

I AM directed by the Honourable the Deputy Governor of Bengal to request that you will submit, for the consideration of the Supreme Government, the accompanying extract from the Report of the Superintendent of Police, Lower Provinces, for the last six months of 1838, relative to "poundage of cattle, &c. for trespass," in order, if it be thought advisable, to the passing of some legislative enactment on the subject.

Paras. 1051 to 1069.

I have, &c.
(signed) *F. J. Halliday*,
Secretary to the Government of Bengal.

Fort William,
12 December 1839.

Legis. Cons. 17 August 1840. No. 12.

EXTRACT from the Report of the Superintendent of Police, Lower Provinces, for the second Six Months of 1838.

Fines on Stray Cattle.

Para. 1051. IN all agricultural countries it has been found necessary by the cultivators of the soil to protect their crops from the trespass of cattle. In England, which is generally an enclosed country, a common pound is attached to every lordship or village, or ought to be so by law; the oversight whereof is to be by the constable or steward of the leet. The process of distress is entrusted to the tenant in possession of the field, or the owner of the crop in which the trespassing cattle is found damage faisant. It is described as the taking of a personal chattel out of the possession of the wrong-doer in the custody of the person who is injured, to procure a satisfaction for the wrong committed. The process is of two kinds, for cattle for trespassing and doing damage, or for non-payment of rent. In India, where British legislation is still in its infancy, laws sufficiently stringent have been enacted to enable the landholders and others to recover by distress the rents due to them, the revenue of government depending in a measure on the efficiency of the law of distraint; but hitherto no law has been enacted to protect the agricultural interests from the damage to which they are rendered liable by the trespass of cattle into cultivated fields generally unprotected by fences.

1052. The people, however, were not disposed to remain quiescent observers of the devastations committed on their crops by stray cattle; numberless affrays which have disgraced our police statement from the commencement of our government,

(B.) No. III.
Relative to Affrays concerning Indigo and Pounding Cattle.

government, may be traced to this feeling: they took the remedy into their own hands, by driving away and impounding the trespassing cattle, and laying fines on the owners whenever they possessed the power, and in so doing they merely assumed the inherent right which all possess, to protect themselves and property when the government of the country cannot or will not do it for them; when they met with resistance the distraint was converted into a bloody affray, and the magistrates soon found it necessary in order to keep the peace to interfere; hence the universal adoption of a plan in every district in Bengal, Behar, and Orissa, whereby the darogahs of tannahs have been authorized to levy fines on the owners of trespassing cattle, on proof of damage having been done by them.

1053. The system which has obtained is as follows:

Whenever a person finds stray cattle grazing in his fields, he drives them to the tannah. On their arrival the darogah takes evidence as to the amount and value of the damage, and if proved he levies a fine, and the cattle are not restored to their owner until the fine be paid. The fines which are levied, after deducting the expenses of the pounding, are sent to the magistrate, and carried to the account of Government. It will be observed that the system is entirely penal, and the persons who have suffered damage can only obtain compensation for the injury which their crops have suffered by a long, tiresome, and expensive regular suit in the Zillah Dewanny Adawlut.

1054. The amount of fines in different districts differ; the average rate is noted in the margin.

Buffaloes and Horses	8 annas.
Calves and Colts	4 –
Sheep and Goats	2 –

1055. The checks to prevent extortion on the part of the darogahs are pronounced to be generally inefficient by the local authorities. The usual system, when a fine has been imposed, is for the darogah to send a report of the case to the magistrate, and at the end of the month an account current, which is checked by an examination of the registers kept by the sheristadar, the nazir, and the treasurer, compiled from the darogah's report; but all the magistrates unite in considering the checks on the Mofussil authorities to be imperfect, if not nugatory. Mr. Battye, the joint magistrate at Mongyr, states, that no checks exist to restrain the darogahs. "The system is only sanctioned by the common consent of the people, and he avows himself to be quite at a loss to propose a remedy to prevent extortion." Mr. Plowden, the acting magistrate of Sylhet, writes, that "checks upon extortion depend upon the people preferring complaints when they have cause; they must be imperfect at the best. If a darogah is dishonest enough to pocket the fines, and make no report, I am not aware in what manner he can be controlled."

1056. I therefore am of opinion that the checks which have been devised to restrain the cupidity of the darogahs of the police are inefficient; but that the checks at the Sudder stations on the magistrates' omlah are equal to the advantages expected from them.

1057. I am afraid we cannot expect much assistance from the people to prevent the embezzlement of the fines. Their object is obtained when the person whose cattle damaged their corn has been fined, and they care not what becomes of the amount levied, as they receive no share of it. In proof of this it is stated by Mr. Metcalfe, the acting magistrate of Backergunge, that no darogah has ever been convicted of extortion or embezzlement in this particular part of his duty.

1058. Opinions differ as to the advantages of the system at present in force. All the authorities appear to consider some protection from carelessness or enmity of cattle owners to be due to the agricultural interests; common sense indeed shows the necessity of it, and experience has proved that whether laws are enacted or not, the people will have protection, legally if possible, but if not legally, by other means.

1059. There can be no doubt of the illegality of the present system, the illegality of which, I must observe, consists, not in the driving and pounding of the cattle found damage faisant, in the fields, but in the tribunal by which the fines are imposed.

1060. By Clause 1, Section 12, Regulation XX. of 1817, the darogahs are prohibited, under pain of dismission from office, from taking cognizance of slight trespass, and by clause 3 of the said section and Regulation the darogahs are prohibited from passing sentence upon any complaint, or from imposing any fine.

(B.) No. III. Relative to Affrays concerning Indigo and Pounding Cattle.

1061. It will thus be found, that the magistrates have for a series of years called upon the darogahs to perform acts, which by law they could not perform except under penalty of dismission from office.

1062. The orders of the Government and of the Nizamut Adawlut on this subject are conflicting.

1063. The Governor of Bengal, on receiving a full exposition of the system in force, instructed the commissioner of Bauleah to carry the produce of the fund to the Government account, and Mr. Secretary Mangles added, "but he (the Governor of Bengal) is of opinion that the remainder, and any further sums accruing on the same account, should be carried to the public credit until the subject shall have received the final consideration of Government." It is evident that the Regulation prohibiting this practice was not taken into consideration, or the honourable the Governor would never have thus sanctioned the collection of an illegal cess by an unlawful tribunal, till the final decision of Government should be passed on a point already adjudicated, and requiring no decision.

See Mr. Secretary Mangles' Letter, No. 555, of 10 May 1836, to the Commissioner of Circuit at Bauleah.

1064. The Nizamut Adawlut prohibited the system in force, in one zillah, by an order issued to the sessions judge of Tirhoot, under date the 21st September 1838 (No. 2,791), but took no notice of the general adoption of the system in all the rest of the districts.

1065. As it is impossible to prevent the agricultural classes from pounding cattle found straying and damaging their crops, it will be necessary to concoct a plan whereby they can be protected from damage, and the other classes from extortion and undue distraint of their cattle.

1066. The plan which appears to me to be the most feasible, is as follows:

1st. The proprietors and others in possession of land to be authorized to seize all stray cattle found on their lands grazing, or doing any other kind of damage, and to drive them to the nearest pound.

2d. Every darogah of a thannah, every ameen nominated under Act I. of 1839, or by the judge of a district, to distrain property, and every pergunnah carjee to keep a pound for the reception of stray cattle brought to the pound, who, in addition to being repaid the expenses of feeding, &c. the cattle, shall receive half the fines to be levied on the owners of the said cattle.

3d. They shall not release any cattle without orders from the Dewanny Adawlut or moonsiffs, under a heavy penalty.

4th. A table of the fines authorized to be levied to be prepared for their guidance.

1067. Summary suits on plain paper to be brought against the owners, if known, of impounded cattle by the impounders before the moonsiffs, who, after due inquiry, shall adjudge the payment of half of the specified fines to the pound-keepers, and the other half to Government, and shall award damages for the injury committed by the impounded cattle to the injured party. Where no owner is to be found, the cattle, as hitherto, to be sent to the magistrate of the district to be disposed of in the usual manner.

1068. It will not be expected in this place that all the precautions necessary to make the plan available should be set forth. It is enough if the explanation be found sufficiently explicit to enable the Legislature to prepare an Act for the purpose.

Receipts - - -	84,287	5	9
Expenditure - -	35,566	10	-
Balance - -	48,720	11	9

1069. The accounts of the fines deposited in the Mofussil treasuries have been very imperfectly kept up. They have in some districts been mixed up with other items of collections. I have annexed in the margin the receipts, expenditure, and balance for the 32 districts, from the commencement of 1836 to the end of 1838. An abstract account current of fines levied on stray cattle will be found in the Appendix, marked (I.)

(A true extract.)

(signed) *F. J. Halliday,*
Secretary to the Government of Bengal.

Legis. Cons.
17 August 1840.
No. 13.

MINUTE by the Honourable *A. Amos*, Esq. dated 21st July 1840.

Distraining Cattle.

THE papers have been detained for several months in consequence of matters more immediately urgent intervening.

It was thought in Council that the grievance was very general and very great, and that a remedy should be attempted, though we did not see very clearly what practical remedy could be conveniently adopted.

On a subject so peculiarly relating to the occurrences and the administration of justice in the Mofussil, I can do no more than put the matter in train. Should it be thought advisable to pass an Act upon this subject, the draft can be modified to express the principle that may be approved of in Council, and the minuter details may be best prepared after receipt of suggestions consequent on the published draft.

(signed) *A. Amos.*

Legis. Cons.
17 August 1840.
No. 14.

AN ACT for authorizing and regulating the Distraining of Animals unlawfully doing Damage to Property.

Enclosure.

1. IT is hereby enacted, that it shall be lawful for any person in the occupation of land, upon which animals of any description shall be unlawfully doing damage, to distrain such animals, or any of them.

Sec. 12, Reg. XVII. of 1799.

2. And it is hereby enacted, that every person making such distress as aforesaid may, in the first instance, keep the animals distrained upon the premises in charge of any person he may think proper, or drive or convey them with due care to a proper place, as near as possible to the place where they were distrained, within the limits of the same pergunnah.

Sec. 14, Reg. XVII. of 1793.

3. And it is hereby enacted, that distrainers shall not work any animals distrained; they shall, in the first instance, provide them with necessary food.

4. And it is hereby enacted, that it shall be the duty of every person so distraining as aforesaid, after securing the distress, forthwith to make a complaint, containing statement of the circumstances of the distress, to a moonsiff within the same pergunnah.

5. And it is hereby enacted, that any such moonsiff receiving such complaint shall forthwith use his best endeavours to summon before himself the owner of the animals distrained, and shall give charge of the animals to a darogah; and such moonsiff may at his discretion order any of the animals to be sold, in order to defray the expenses of sustenance, before a decision can be pronounced.

6. And it is hereby enacted, that after taking due means to summon the parties interested, the moonsiff shall make a summary decision upon the complaint; and if the animals distrained shall be proved to have unlawfully committed damage to the property of the complainant, the moonsiff shall ascertain the amount of such damage, and of all cost reasonably incurred in making the distress and preferring the complaint, and of all charges incident to the distress, and shall make an order for the payment thereof, and shall detain the cattle distrained until such time as the same is paid; and if the same be not paid within a reasonable time, he shall order so many of the cattle to be sold as shall be necessary for compensating the complainant and defraying all charges incident to the distress.

7. And it is hereby enacted, that any such moonsiff as aforesaid may award damages and costs to the owner of the animals distrained, in case of the distress being illegal, of the animals distrained not being duly fed or taken care of by the complainant, or in case of any unnecessary delay of the complainant in preferring his complaint.

B.1 No. III.
Relative to Affrays concerning Indigo and Pounding Cattle.

8. And it is hereby enacted, that any person unlawfully taking away any animals that have been distrained as aforesaid shall, on conviction before any magistrate, be liable to be imprisoned with hard labour for any term not exceeding three months, and the animals rescued shall, by order of any magistrate, be restored to the persons legally authorized to take charge of the same.

9. And it is hereby enacted, that all proceedings respecting such distresses as aforesaid shall be final, except in cases in which the right to the occupancy of property is in dispute, in which case an appeal will lie from the decision of the moonsiff, as provided by the Regulations; provided that, in any case of any such appeal, a deposit be made with the moonsiff by the appellant, if he be the person whose beasts are distrained, of a sum of money equal to that which the moonsiff shall have advised him to pay; provided that, in order to defray such deposit, the moonsiff shall, if requested by the appellant, sell so many of the animals distrained as shall be necessary to raise the same.

10. And it is hereby enacted, that any darogah or other officer receiving any money from any distrainer, or from any person whose property is distrained, under colour of liability, or for favour in relation to such distress, shall be liable, before any magistrate, to forfeit three times of the amount, and to be imprisoned with hard labour for the space of six calendar months.

11. And it is hereby enacted, that every moonsiff shall come at least in every month, and oftener, if required, furnish a circumstantial report of all his proceedings in cases of distress authorized by this Act to ' of .

(No. 361.)

Legis. Cons. 17 August 1840. No. 15.

From *F. J. Halliday*, Esq. Junior Secretary to Government of India, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal.

Sir,

Legislative Dep.

I AM directed to acknowledge the receipt of your letter (No. 2002) dated the 12th December 1839, submitting extract from the report of the superintendent of police, relative to poundage of cattle for trespass.

2. The Governor-general in Council has considerable doubts upon the propriety of legislating on this subject in the manner desired by the late superintendent of police. Assuredly the evil complained of deserves careful consideration; but, on the other hand, it seems very difficult, under the circumstances and habits of the Indian agricultural community, to frame an effective law which shall not be liable to very great abuse and perversion, and be likely, in the long run, to produce more evil than it was intended to prevent.

3. Perhaps the Right honourable the Governor of Bengal might with advantage consult the present superintendent of police, and obtain from him and from the most intelligent and experienced of his subordinates distinct opinions as to the extent of the evil and the kind of remedy required. It would be desirable to ascertain, if possible, the ideas of the people themselves upon this subject, so far as it is possible to ascertain them; and in the meantime his Lordship in Council will inquire what is the law or practice in respect to cattle trespasses in the other presidencies.

I have, &c.

(signed) *F. J. Halliday*,
Junior Secretary to the Government of India.

Council Chamber, 17 August 1840.

(No. 262.)

From *F. J. Halliday*, Esq. Junior Secretary to the Government of India, Legis. Cons. 17 August 1840. No. 16.

(No. 263.)

To *L. R. Reid*, Esq. Chief Secretary to the Government of Bombay.

Sir,
I AM, &c.

Honourable the Governor in Council.

Bombay.
I have, &c.

To *H. Chamier*, Esq. Chief Secretary to the Government of Fort St. George, dated 17th August 1840.

Sir,
I AM directed to transmit to you, for submission to the Right honourable the Governor in Council, the accompanying copy of a correspondence, noted in the margin*, on the subject of enacting a law for the prevention of trespass of cattle, and to request that his Lordship in Council will favour the Governor-general in Council with information as to what is the law or practice in respect to cattle trespasses in the Presidency of Fort St. George.

I have, &c.
(signed) *F. J. Halliday*,
Junior Secretary to the Government of India.

—(B.) No. IV.—

ON THE SUBJECT OF TRANSPORTATION FOR LIMITED TERMS.

(B.) No. IV. On the Subject of Transportation for Limited Terms.

(No. 1435 of 1840.—Judicial Department.)

From *W. R. Morris*, Esq. Secretary to Government of Bombay, to *F. J. Halliday*, Esq. Secretary to the Government of India, in the Legislative Department. Legis. Cons. 29 June 1840. No. 16.

Sir,
I AM directed to transmit to you the accompanying extracts para. 13th of a letter from the register of the Sudder Foujdarry Adawlut, dated the 10th of August last, No. 1396, and paras. 30th to 32d of its enclosure, from the Judicial Commissioner for the southern Mahratta country, suggesting that an Act may be passed providing that the punishment of transportation shall always be for an unlimited period; and as the proposed new criminal code admits of no limited transportation, to convey the request of the Honourable the Governor in Council, that the subject may, if the Right honourable the Governor-general of India in Council see no objection, be referred for the consideration of the Indian Law Commission.

I have, &c.
(signed) *W. R. Morris*,
Secretary to Government.

Bombay Castle,
4 June 1840.

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* Letter from Secretary Government of Bengal, of 12 December 1839, with Enclosure.
Letter to Secretary Government of Bengal, of 17 August 1840—*H. H. C.*

Legis. Cons. 29 June 1840 No. 17. Enclosure

EXTRACT Para. 13, of a Letter from the Registrar of the Sudder Adawlut, dated 18th August 1839, No. 1396.

Para 13. In respect to the remarks of Mr. Greenhill in para. 32, the judges would suggest that an Act be immediately passed, making the punishment transportation for life only.

EXTRACT Paras. 30 to 32, from the Judicial Commissioners' Report.

The effect of the punishment of transportation for life likely to be weakened by the frequency of transportation for short periods introduced.

Para. 30. I fear I have already trespassed too much on the time and attention of the Judges, and I shall only take leave to mention one more subject that has engaged my consideration; it is one of some importance to the efficiency of our criminal judicature, and can only be remedied by the legislature, if remedy it require.

Continued. Our laws on the subject —their effect.

Para. 31. Our laws, wisely, I think, admit of no transportation but for life; and it must often have proved a satisfaction to the Judges, as it has done to myself, to have been able to commute a sentence of death to that of transportation, with the knowledge that whilst a life was spared, and the individual doomed to no desperate existence, the effect on others was little short of that occasioned by deprivation of life itself; when that fortunate effect is lost, executions must either become much more frequent, or some other equally efficacious example must be resorted to. Her Majesty's Courts are not bound by any such law; they banish natives for short periods; and it has long been a subject of wonder to me that our sentences of transportation over the "black waters" to some place as yet undefined in their imaginations, but to utter desolation they think, have not already lost the charm. It can only be accounted for by the smallness of the number so sentenced by those courts, and to the slowness with which information spreads throughout the lowest classes of this country. Now, however, that the military courts add largely to the number of return convicts, the truth will at last be discovered, and much of the effect lost; indeed, I have heard it stated that it is already so to some extent.

Continued. New Code on the subject

32. The draft of the new code allows of no limited transportation; and I would beg to submit, for the consideration of the judges, whether the subject should not be brought to the notice of Government for immediate legislation.

(True extract.)

(signed) *W. R. Morris,*
Secretary to Government.

(No. 105.)

Legis. Cons. 29 June 1840. No. 18.

From *F. J. Halliday,* Esq. Junior Secretary to the Government of India, to *J. C. C. Sutherland,* Esq. Secretary Indian Law Commission.

Sir,

Judicial Dep.

I AM directed by the Right honourable the Governor-general in Council to transmit to you, for the information and consideration of the Law Commissioners, the accompanying copies of a letter, No. 1453, dated the 4th instant, and of its enclosure, from the Secretary to the Government of Bombay, on the subject of a proposal to pass an Act providing that the punishment of transportation shall always be for an unlimited period.

I have, &c.

Council Chamber,
29 June 1840.

(signed) *F. J. Halliday,*
Junior Secretary to the Government of India.

(No. 27.)

From *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission, to *F. J. Halliday*, Esq. Junior Secretary to the Government of India, Legislative Department. Legis. Cons. 29 June 1840. No. 10.

Sir,

By direction of the Law Commissioners, I have the honour to acknowledge the receipt of your letter of the 29th June, to which is annexed copy of a letter from the Secretary to the Bombay Government, and its enclosures.

2. The Sudder Adawlut at Bombay proposed to the Government at that presidency that an Act be immediately passed, providing that the penalty of transportation shall be always for an unlimited period; and the Government, in bringing up the subject before the Supreme Government, notices that the draft criminal code submitted by the Law Commission nowhere admits of limited transportation, and proposes that the notice be referred to the Law Commission for consideration.

3. I am directed, in reply, to refer to note A, (page 2,) appended to the draft penal code, which explains the motives which influenced the Law Commissioners in abstaining from proposing limited transportation as a penalty in any instance. The Law Commissioners adhere to the opinion therein expressed. They are not quite sure from your letter whether Government wish that they should express an opinion upon the propriety of immediately legislating in the manner proposed by the Bombay Government, but they desire me to remark that they see no objection to such a proceeding.

I have, &c.

Indian Law Commissioners' Office, 14 August 1840. (signed) *J. C. Sutherland*, Secretary.

The foregoing letter requires no order.

— (B.) No. V. —

MADRAS JUDICIAL SYSTEM.

(B.) No. V. Madras Judicial System.

(No. 28.)

From *A. Amos*, *C. H. Cameron*, *F. Millett*, *D. Eliott*, *H. Borradaile*, Esqrs. Members of the Indian Law Commission, to the Right Honourable the Earl of *Auckland*, G.C.B. Governor-general of India in Council. No. 37.

We have now the honour to report upon the proposed changes in the Madras judicial system, to which our attention was called by Mr. Officiating Secretary Grant's letter, dated 3d June 1839, with reference to a despatch from the honourable Court of Directors to the government of Fort St. George, under date the 5th January 1838. Legis. Cons. 5 Oct. 1840.

2. In this despatch the honourable Court of Directors made the following remarks:

"It is apparent from the correspondence here referred to, that it would be desirable to abolish the provincial courts, appeal and circuit, under your presidency as well as in Bengal; their abolition has accordingly been determined upon for the last seven years, but successive obstacles have arisen to prevent that resolution from being carried into effect. The subject being under reference to the Governor-general in Council, we trust that without further delay such reform of that portion of your judicial establishments as may be requisite will now be adopted."

3. Upon receiving this despatch, the Governor in Council communicated the remarks of the honourable Court to the Government of India, requesting

From the Chief Secretary to Government, Fort St. George, 30 Oct. 1838.

attention to the hope expressed by the Court, that no further delay would be allowed to occur in the reform of this portion of the judicial establishments of Fort St. George.

From Mr. Officiating Secretary Grant, 3 June 1839.

4. The President in Council directed the letter from the government of Fort St. George, and the extract from the honourable Court's despatch, which accompanied it, to be communicated to us with the following observations:

"When the honourable Court wrote that despatch they had not been made acquainted with the sentiments of the Law Commissioners, conveyed in their officiating secretary's letter of the 30th May 1837. Those sentiments were opposed to the introduction at that moment of such a change in the Madras judicial system as would be involved in the abolition of the provincial courts, and the appointment of Commissioners, before the Law Commission might be able to report which system of judicial administration they might recommend to be finally settled for the provinces under the Madras government. The President in Council does not not therefore propose to introduce the change that had been under contemplation, or any change of like extent, until the Law Commission may report that the objections they have noticed are, in their opinion, removed by the progress made in their labours. With reference to the sentiments of the honourable Court, as expressed in the extract above alluded to, and to the importance of the question, the President in Council recommends this subject to the early attention of the Law Commission."

From Secretary to Law Commission, 30 May 1837.

5. When the Law Commission had this subject before under consideration, the members of it were strongly inclined to the opinion, that the abolition of the provincial courts would be advisable ultimately, but they thought "it would be better on the whole to make no alteration in the existing jurisdictions while the future system was still to be formed; in other words, not to begin to make a change till it is determined what the change shall be."

6. We have since had the subject of the judicial establishments more particularly under consideration, and have deliberated upon the principles which should be observed in reforming the system of judicature, and we no longer see reason to hesitate in recommending the immediate abolition of the provincial courts under the Madras presidency.

7. This measure, according to our present views, will be necessary at all events, as a preliminary step to the introduction of the plan which we have in contemplation, and we do not perceive any ground to apprehend inconvenience or embarrassment with reference to future measures, from carrying it into effect at once, under the provisions for the performance of the present functions of those courts which we shall propose. The evil of the present system, for which a remedy is urgently required, is the delay of justice in the cases, civil and criminal, especially the latter, which fall within the jurisdiction of the provincial courts. In the proceedings of the Foujdarry Adawlut, under date the 22d September 1834, it was shown on an average of the three years 1831, 1832, 1833, that in the cases committed for trial before the courts of circuit, the interval between the apprehension and trial of the prisoners was 133 days, and that in the cases tried by those courts, and referred for the sentence of the Foujdary Adawlut, the interval between apprehension and sentence averaged 266 days. A letter from the register of the Foujdary Adawlut, dated 1st May of this year, herewith submitted, shows that the average interval between apprehension and trial in the cases referred from 1833 to 1839 was 164 days, and between apprehension and sentence 274. The average interval between apprehension and trial, during the last three years of this period, was 137 days, and so long as "the gaols are delivered only once in six months," say the judges of the Foujdary Adawlut, "it cannot be reduced much."

(In original.)

8. In the proceedings of the Sudder Adawlut, under date the 28th June 1834, it was stated, with regard to the provincial courts of appeal in the centre and northern divisions, that "the extreme delay which now occurs in the disposal of the cases before them, amounts in effect to a denial of justice. Not only are the suitors before these courts thus injured, but the delay in one division materially affects the regularity of the proceedings of the Court of Sudder Adawlut."

9. On

9. On reference to the latest returns that we have before us, showing the state of the files of these courts on the 1st of January 1839, we find that the number of causes depending in each of them was not much less than at the time to which the above remarks referred. Of 103 cases on the file of the provincial court, centre division, 57 were of more than one year's standing, 24 above two years, seven above four years, and three above six years; of 105 on the file of the provincial court, northern division, 63 were above one year, 39 above two years, 16 above four years, four above six years, and two above 10 years.

Number of Original Suits and Appeals depending 1 January 1833:

Centre Division - -	103
Northern Division - -	105

Number of original Suits and Appeals depending 1 January 1834:

Centre Division - -	109
Northern Division - -	123

10. It appears to be generally admitted, that this great evil cannot be effectually corrected without a change of system, involving the abolition of the provincial courts, but there is some difference of opinion as to the arrangements which should be made in consequence.

11. We are of opinion that, under existing circumstances, it is advisable to make no change but what is necessary to correct the evil complained of; and we think that a change in the machinery of the system, with some subsidiary arrangements, will be sufficient for this object. We adhere to the opinion expressed in the 16th paragraph of our secretary's letter, dated the 30th May 1837, that it is not expedient at present to abolish all reference to the Mahomedan law in the administration of criminal justice. The particular measure which was then recommended has been carried into effect by Act I. of 1840*, and we think it proper to leave the criminal law as it now stands, until Government shall come to a determination upon the penal code which has been submitted for their consideration. We are still of opinion also, that the proposed appointment of commissioners of revenue and circuit in the provinces, "who, besides discharging the duties of the supervision and control now vested in the circuit judges and collective circuit courts, should be commissioners under Regulation VII.† of 1822, and hear appeals from collectors, under Regulation IX.‡ of 1822", is not expedient. It may be advisable, in framing a general scheme, to provide specially for the supervision and control of functionaries employed in the administration of civil and criminal justice and police in the provinces; but the fittest arrangement for this purpose cannot be determined until the scheme of administration has been digested and settled in detail. With respect to the powers of supervision and control now vested in the circuit courts, it appears to us that they may for the most part be transferred to the local officers, who, on the plan we are about to propose, will be charged with the judicial functions of those courts; and we see no reason why they should not be exercised by them with at least equal effect, and probably with greater, from the control being immediate and continual, while it will still be vested in the same person or persons, of the same or nearly the same standing in the service, as at present.

12. The plan of administration, which appears to us to be best calculated to effect the immediate object, and which will be at the same time most consistent with the general scheme that we have in contemplation, is to transfer the judicial functions of the provincial courts of appeal and circuit to zillah judges, to be styled civil and sessions judges, appointing one to each district in which the administration of the revenue and police is under one and the same head; and to establish at the judge's station in eaeh district another civil and criminal court under an assistant judge, or a principal sudder ameen, at the discretion of the Governor in Council, with the jurisdiction and powers specified in Regulations I. and II., and Regulations VII. and VIII., 1827, as the case may be, subject to certain exceptions which we shall suggest in the sequel, continuing such of the detached auxiliary courts now existing as may be found necessary.

13. We propose that the session judge, assisted by a Mahomedan law officer, shall sit from time to time, as there may be occasion, to try all cases now cognizable by the court of circuit, which shall be committed to him by the assistant

* This Act, which dispenses with a futwa from the law officers of the Foujdarry Adawlut, has operated to diminish the delay in that court very much. Before it was passed, the average delay in disposing of trials after the record was received was 27 days; it has since been diminished to 11 days.

† For inquiry into the conduct of public officers.

‡ In cases of malversation in revenue affairs.

(B.) No. V.
Madras Judicial System.

assistant judge or principal sudder ameen at the head station, or the assistant judge or principal sudder ameen of the detached auxiliary court, if there is one, and that he shall proceed immediately in the trial and disposal of them, in the same manner as the judges of circuit now proceed, referring for the final orders of the Foujdary Adawlut all cases which are now referable to that court by the courts of circuit, and making the same reports and statements of his proceedings as are made by the courts of circuit.

14. By this arrangement the interval between the apprehension and trial of a prisoner will be at once reduced to an average probably not exceeding one-fifth of the time to which it now extends. The trial will be held under circumstances infinitely more favourable to the eliciting of truth when the facts are fresh in the recollection of the witnesses, and there has not been time for the preparation of a false defence, and of false testimony to support it, and a great relief will be afforded to prosecutors and witnesses in being saved from the serious inconvenience they are now subject to in being obliged to leave their own business, and to travel to a distance from their homes a second time to attend the court of circuit for an indefinite period.

Average of the last 3 years, 137 days; $\frac{1}{5}$th, say, 27 days.

15. We propose that the assistant judges and principal sudder ameens shall have exactly the same powers and duties in the criminal department, as the same officers have now under Regulations II. and VIII. of 1827 respectively in the districts where there are no zillah courts. In the discharge of those duties they will be assisted by the sudder ameens attached to their courts.

16. But as principal sudder ameens under the existing law are not competent to exercise criminal jurisdiction in respect of Europeans and Americans, it will be necessary to provide, where they are appointed, that the session judge shall take up any cases sent by the magistrate under Act XXXIV. of 1837, in which such persons are charged with crimes or misdemeanors, dealing with such of them as may require it in his capacity of sessions judge, without the formality of a commitment, and in respect to the others, performing the functions of an assistant judge.

17. We propose that the new assistant judges and principal sudder ameens respectively, shall have charge of the gaols at the head stations, which will be the zillah gaols, where of course all convicts under sentence by the sessions judges and Foujdary Adawlut will be confined, and generally all prisoners, civil* as well as criminal, who are now committed to the zillah gaols; and to the session instead of the circuit judges will devolve the duty of visiting them, which duty they should be required to perform at least once a month. They will be the proper officers also to visit state prisoners confined under Regulation II. of 1819.

18. The assistant judges and principal sudder ameens, whether at the head station or detached, should submit monthly to the sessions judge the same calendars and statements as are now submitted by the several criminal courts to the judge of circuit, that officer being empowered to proceed upon them, as the circuit judge is now authorized to proceed. The session judge should also have the power vested in the collective court of circuit by Section 24, Regulation X. of 1816, to enable him to call for the proceedings of any of the said subordinate criminal judges on petitions being presented to him relative to their proceedings, and to pass such orders thereupon as may be proper.

19. The session judge should be authorized to exercise the same powers as the judge on circuit with respect to cases of requisition of security under Regulations II. of 1822 and VI. of 1827, excepting cases which have been dealt with by the magistrates. In such cases his duty should be confined to receiving petitions under C. 2, Sec. 5, and C. 2, Sec. 8, Regulation VI. of 1827, and forwarding them to the Foujdary Adawlut, with which court should rest the power of passing orders. In the cases described in C. 4, Sec. 8, of the same Regulation the proceedings should also be forwarded by the session judge to the Foujdary Adawlut for orders.

20. We are not prepared at present to recommend that the session judges should be empowered to exercise any authority over the magistrates, or any interference in matters of police, except to point out to the magistrates instances of

* This will supersede Sec. 14, Reg. VII. of 1827, which prohibits collectors sending persons for confinement to the native judge, now principal sudder ameen.

of misconduct or neglect on the part of police officers which shall come to their knowledge in the course of their investigations, or shall be reported to them by the assistant judge or principal sudder ameen, and in aggravated cases to report the same to the Foujdary Adawlut, for their consideration and orders.

21. The session judge should also be at liberty to bring to the notice of the Foujdary Adawlut any neglect of the magistrate to comply with requisitions made to him as necessary to the conduct of any pending trial, or any dilatoriness or other default on the part of the officer under his authority, by which the trial may have been obstructed, by remarks in the ordinary statements rendered to that court of cases disposed of by them, or in the reports of referred trials or by special report. And it seems to be advisable that these judges should be required to make reports half-yearly or yearly of the observations that have occurred to them in the course of their proceedings upon the working of the whole system for the administration of criminal justice, including the conduct of the police so far as it has come within their view in the cases they have examined, and the conduct of the criminal courts under them, also upon the management of the gaols and the treatment and employment of the prisoners.

22. The magistrate should submit monthly to the Foujdary Adawlut the same calendars, &c. as they now submit to the judge of circuit at the period of the sessions, and they should be required to receive and submit to the Foujdary Adawlut any petitions which may be presented to them against their proceedings in any of the cases therein recorded. It would be inconvenient to transmit the original proceedings with the calendars, and it should therefore be left to the Foujdary Adawlut to call for them when required.

23. It is to be remembered that the ordinary jurisdiction of the magistrate under the presidency of Fort St. George is confined to petty offences, such as abusive language, calumny, inconsiderable assaults, and affrays, and petty thefts, not attended with any aggravating circumstances, their power of punishment being limited, with respect to the former class of offences, to imprisonment for 15 days, and a fine not exceeding 50 rupees, (except when the offender is a zemindar, or other superior landholder, in which case a fine not exceeding 200 rupees,) and with respect to the latter, to corporal punishment, not exceeding 18 rattans, now commuted to 90 lashes with a cat of nine tails, or imprisonment for a term not longer than one month *.

24. The civil jurisdiction of the provincial court being transferred to the civil judges of zillahs, they will receive and try all original suits arising within the zillahs now cognizable by those courts, and regular and summary appeals from the assistant judges, and principal sudder ameens, under the same rules of procedure as are now observed by the provincial courts, and subject to the same appeal to the Sudder Adawlut. They should also receive and try appeals in suits tried originally by assistant judges and principal sudder ameens, for an amount not exceeding 1,000 rupees, in which appeals now lie to the zillah judge.

25. The time for appealing to the civil judge from decrees of assistant judges or principal sudder ameens, we think may properly be confined to 30 days, the time now allowed for appeals to zillah judges from the decrees of registers, instead of three months, the time allowed for appeals from zillah judges to the provincial court.

26. Of the jurisdiction now belonging to the zillah judge, we would also reserve to the civil judge the cognizance of appeals from the decrees of the sudder ameens and district moonsiffs of the zillah. We think that all such appeals should be filed in his court. We believe that in most of the zillahs the judges will be able to decide all or a very large part of those appeals, and we are satisfied that they cannot be employed more advantageously. Where the criminal business is so heavy as to prevent this, the judge should still make a point of examining the proceedings of each of the sudder ameens and district moonsiffs by trying appeals from them from time to time, at no distant interval.

The

* This is the ordinary jurisdiction of the magistrate under the Presidency of Fort St. George; but, by the Post Office Act, XVII. of 1837, very much larger powers are given to magistrates generally under all the Presidencies. Where the Customs are rented, magistrates, by Regulation V. of 1821, may sentence to imprisonment with labour for three months, on a second conviction, for defrauding the Customs; and by Regulation II. of 1822, may sentence a person convicted of having counterfeit coin in possession to fine, and imprisonment for six months, if the fine is not paid.

(B.) No. V. Madras Judicial System.

The appeals from sudder ameens and district moonsiffs which he cannot try himself, he should be authorized to refer to the assistant judge, or principal sudder ameen, at his discretion. We think that the civil jurisdiction of the sudder ameens should be confined to original suits, referred to them by the assistant judges or principal sudder ameens.

Vide Sect. 16, Reg. V. 1831, Bengal Code.

27. From the decisions of the civil judges on appeals from sudder ameens and district moonsiffs, a special appeal will lie to the Sudder Adawlut, and we would recommend that the same course be prescribed with respect to the decisions of the assistant judges and principal sudder ameens on appeals from the same functionaries.

28. We take this occasion to say generally that we are inclined to the opinion, that all special appeals involving, as they must always do, points of law or usage, should be heard and decided by the highest court.

29. We are of opinion, with reference to Sect. 8, Regulation VI. of 1816, and Sect. 13, Regulation VIII. of 1816, by which district moonsiffs and sudder ameens are liable to action in the civil courts, and to prosecution criminally, for certain misconduct in office, that the civil actions should be instituted only in the court of the civil judge, and that upon criminal prosecutions they should be tried by the sessions judge.

30. It will be necessary to provide that where a principal sudder ameen is appointed, the civil judge shall exercise jurisdiction in those cases which are specially excepted from the cognizance of principal sudder ameens by the existing law, viz. in cases in which a European officer of government is a party, or in which an appeal is made from the decision of a European officer of government.

C. 2, S. 5 & 7, 8, Reg. VII. 1827.

31. We propose that the assistant judges and principal sudder ameens, holding their courts at the head station, shall respectively have civil jurisdiction, and authority agreeably to the provisions of Regulations I. and VII. of 1827, and the other Regulations applicable to the existing courts under the same officers, subject to the provision proposed above, by which they will be precluded from receiving directly appeals from sudder ameens and district moonsiffs.

32. With respect to detached auxiliary courts, having jurisdiction over talooks remote from the station of the civil judge, we think it should be left to the discretion of the Sudder Adawlut to determine whether appeals from the district moonsiffs within the limits subject to their jurisdiction should be preferred directly to those courts or to the court of the civil judge. We are of opinion that it is only where the distance would render it very inconvenient for suitors to attend the principal court of the zillah, that a direct appeal to the subordinate court should be allowed, and that when appeals to the subordinate court from district moonsiffs are allowed, the civil judge should be authorized, at his discretion, to call up some of them to his own court, from time to time, to enable him to examine the proceedings of those inferior judges. The appeals from sudder ameens we think should always be to the civil judge.

33. Under the Regulation for principal sudder ameens, these officers are not competent to suspend or fine a district moonsiff, but are required to report any misconduct or neglect of duty on the part of district moonsiffs within their jurisdiction, which may come to their knowledge, to the zillah judge. The recommendation of persons for the office of district moonsiffs also rests with the zillah judge. We are of opinion that the district moonsiffs generally, as well within the jurisdiction of assistant judges as of principal sudder ameens, should be subject to suspension and fine only by order of the principal judge of the zillah. We are of opinion also that the recommendation of persons for the office of district moonsiff, under the proposed arrangement, should rest with the judge. We think that the appointment should be made by the judges of the Sudder Adawlut, and that a district moonsiff should not be liable to dismissal but by their order.

34. We propose that the civil judges shall be authorized to refer the execution of their own decrees and those of the Sudder Adawlut to the assistant judges and principal sudder ameens.

35. Under the present Regulations sudder ameens are not competent to execute their own decrees. We see no reason for this restriction (which does not apply to district moonsiffs), and we propose that it be removed, and that they be authorized to issue process of execution and all other process relating to causes which are or have been depending before them, directly through the regular officers

officers of the court to which they are attached, in the same manner as registers now do.

36. Although we are not insensible of the disadvantage of abolishing an office which affords a judicial training to the junior members of the civil service, we concur in the recommendation of the Madras Government, that the office of register be abolished, and where registers are now employed, and their services cannot be dispensed with without the substitution of other judicial officers, we would suggest that extra sudder ameens be appointed.

37. We take this opportunity to bring to the notice of the government of India that the office of sudder ameen of a zillah court in the Madras presidency is still virtually restricted to persons of the Hindoo and Mahomedan religions, by the unrepealed provisions of Sect. 3, Regulation VIII. of 1816, that the Hindoo law officers of the provincial courts, and the Hindoo and Mahomedan law officers of the zillah courts shall by virtue of their offices be sudder ameens of the zillah in which those courts may be stationed, notwithstanding Act No. XXIV. of 1836, which declares that no person whatever shall, by reason of place of birth, or by reason of descent, be incapable of being a principal sudder ameen, sudder ameen, or moonsiff, within the territories of Fort St. George, and provides particularly for the case of a British-born subject holding any of those offices. By Act XXIX. of 1836, the Sudder Adawlut are competent, with the sanction of government, to augment or diminish at discretion the number of sudder ameens; and we find from statements furnished to us that several of the zillah courts have now only one, while others have three. It appears to be understood that when the number of sudder ameens assigned to a zillah court exceeds the number of law officers, the judges of the Sudder Adawlut are at liberty to appoint an extra one when required, without a certificate of qualification as a law officer, and that these extra appointments are therefore open to all according to the intention of Act XXIV. of 1836, but where there are two law officers, and the number of sudder ameens is restricted to two, the law officers must be appointed. We would recommend that Sect. 3, Regulation VIII. of 1816, which is considered to improve this restriction, be repealed*; it being quite contrary to the spirit of the Act, and in our opinion very inexpedient, as shutting out from this important office persons much better qualified for its functions than the law officers who at their first appointment, however well instructed they may be in law, to the study of which they have given their exclusive attention, are generally quite devoid of experience not only of judicial duties, but of public business of any kind. Generally the best men for the office would be experienced district moonsiffs, and there would be considerable advantage in their having the hope of this promotion as a stimulus to exertion and a security for integrity; but they are excluded, and thus the Regulation has a doubly injurious effect.

38. It will of course be at the discretion of the Sudder Adawlut with the sanction of government, if the Regulation should be repealed, to appoint law officers to this situation occasionally, and it would be proper to provide that there should always be law officers enough, including those of the Sudder Adawlut, to answer the calls of the courts for exposition of the law.

39. We concur in the opinion expressed by the Madras government, that, whatever may be the arrangement determined upon to provide for the future performance of the judicial functions now exercised by the provincial courts, a special and independent arrangement should be made for the disposal of the arrears of civil cases pending in those courts. The draft of a regulation, prepared by the Sudder Adawlut for this purpose, provides that a single judge should be appointed, with authority to decide all original suits and appeals on the file of each of the courts, at the date of its promulgation, allowing an appeal of right to the Sudder Adawlut from decrees of such single judge, which may reverse or alter the decisions of lower courts, but making his decrees final when they confirm the decisions of lower courts, unless a special appeal be admitted by the Sudder Adawlut. These provisions are in accordance with the existing law, for both the provincial courts and the Sudder and Foujdary Adawlut, by which single judges, while they are empowered of their own authority to confirm, are restricted from reversing or altering any order or decision of a subordinate court; but the decision of all original suits, and regular appeals of the same

Regulation D. enclosed in letter from Chief Secretary to Government of Fort St. George, of 3 June 1836.

Regulation VIII. of 1831.

* The corresponding provision in the Bengal Code was repealed by Sect. 14, Reg. V. 1831.

(B.) No. V.
Madras Judicial System.

same description, will in future, under the proposed arrangement, be made by a single judge, and in the latter will be final, whether the original decree be confirmed or reversed; and we think it inadvisable to make any difference with respect to the arrears; we would, therefore, omit the restriction, and allow of no appeal of right from any judgment passed on a regular appeal by the judge who is to dispose of the pending suits. If it were otherwise, the business of the Sudder Adawlut would be inconveniently increased for a time, and the final disposal of the pending suits would be protracted.

40. We think, however, that in a case of special appeal, if the judge differs from the court below, his opinion should not be decisive. In such a case we would recommend that the judge should be directed to record his opinion, and to transmit the record of the case, with his proceedings, to the Sudder Adawlut, and that a single judge of that court should be authorized to pass a final judgment, confirming* or reversing† the decree appealed against. In this recommendation we follow the principles of the existing regulations, considering the judge of the Sudder Adawlut as substituted for a senior judge of the provincial courts.

41. For the disposal of summary and miscellaneous petitions connected with the cases made over to them, the judge, we think, should be vested with the whole power of the provincial court.

42. We would further suggest that the original suits on the files of the provincial courts, in which no proceedings have been held beyond the filing of the pleadings, and exhibits should be transmitted to the district judge, to whose jurisdiction they would fall under the new arrangement, provision being made for an appeal to the Sudder Adawlut in these cases, and also in original suits already decided by the zillah courts, but still open to appeal at the time the new arrangement shall take effect.

43. We have before us returns from which it appears that, on the 1st January 1839, the files of the provincial courts stood as follows:

	ORIGINAL SUITS.	APPEALS.	TOTAL.
Centre Division - - - -	20	83	103
Northern ditto - - - -	38	67	105
Southern ditto - - - -	11	18	29
Western ditto - - - -	11	20	31

44. Assuming that the state of the files is much the same at the present time, it is to be expected that a single judge, having nothing else to do, would dispose of the arrears, including miscellaneous business, in the courts of the Northern and Centre Divisions respectively, in from 10 to 15 months, and in those of the Southern and Western Divisions in four or five months.

45. The plan which we have here suggested, of appointing a civil and session judge to each district, in which the administration of the revenue and police is under one and the same head, appears to us, under existing circumstances, to be applicable generally, except with regard to the districts of Ganjam and Vizagapatam, where, by Act XXIV. of 1839, the jurisdiction of the ordinary civil and criminal courts is very much confined‡. Up to the 1st of July there was a zillah court at Vizagapatam, and an auxiliary court, under a principal sudder ameen at Itchapore, in Ganjam; but by a resolution§ of government, dated the

* By Sect. 3, Reg. XV. of 1802, in a difference of opinion between two judges, upon an appeal case, the opinion of the senior prevails, if it goes to affirm the decree of the inferior court.

† By C. 3, Sec. 2, Reg. VIII. of 1831, when a judge sitting upon an appeal, being of opinion that the decree appealed against ought to be reversed, refers it to a second judge, if that judge concurs with him, he is competent to pass a decree accordingly.

‡ In Vizagapatam it is confined to 351 villages (out of 2,841), with a population of 1,40,536 persons, out of more than 1,000,000; in Ganjam, to 156 villages, with a population of 50,080 persons, the whole population of the district amounting to near 600,000.

§ Copies of this resolution, and of reports and proceedings connected with it, are submitted herewith.

the 12th May 1840, the zillah court was abolished, "as not absolutely necessary for administering to the judicial wants of so limited a jurisdiction as that left under the operation of the ordinary regulations in Vizagapatam District;" and an auxiliary court, under an assistant judge, was substituted for it. This new court, and the court at Itchapore, being attached to the zillah of Masulipatam, while the tracts exempted from the operation of the general rules, for the administration of civil and criminal justice in these districts, are so very much more extensive than those which remain subject thereto, the appointment of a civil and session judge to each would be superfluous. We are of opinion that one should be appointed with jurisdiction over the two districts, and that the court should be located at Chicacole, the former seat of the zillah court, on the border between the two districts about equidistant from the southern extremity* of Vizagapatam and the town of Ganjam†. Although the extremes are rather distant, yet, considering the small portion of the whole population subject to the jurisdiction of the ordinary courts in the two districts, consisting altogether of about 190,000 persons‡, who, it may be supposed, are resident in the more remote parts on either side, and the few cases cognizable by the session judge likely to arise among them, we do not apprehend that much inconvenience will be felt on this account. We observe that the Sudder Adawlut have lately had under consideration§ a proposal for the substitution of one zillah court to be re-established at Chicacole, in lieu of the two courts now at Vizagapatam and Itchapore, and have expressed their opinion that such an arrangement is objectionable, on account of the distance of the extreme parts of the two districts. We concur in this opinion with reference to the cases, civil and criminal, which fall within the jurisdiction of those courts; and, therefore, while we propose that a civil and session judge shall be located at Chicacole, we propose also that the courts of Vizagapatam and Itchapore shall be continued under principal sudder ameens. But for the convenience of the people who live nearer to Chicacole than to Vizagapatam and Itchapore respectively, we would recommend that the sessions judge at Chicacole be empowered to receive, direct from the heads of police of the neighbouring talooks in both districts, all criminal cases above the cognizance of the magistrates, and to try and determine both those falling under his own jurisdiction as session judge, and also those cognizable by the lower court, without the intervention of another officer exercising, with respect to those cases, the powers of both courts. Cases arising in the other talooks should be sent, as usual, to the principal sudder ameens, and the session judge should try such only as are committed to him by those officers. In like manner we think appeals from the district moonsiffs, whose jurisdiction is nearest to Chicacole in both districts, should be preferred to the civil judge, and the rest to the principal sudder ameens at Vizagapatam and Itchapore respectively.

46. These arrangements we suggest as what appear to us to be best adapted to the present system of administration in Ganjam and Vizagapatam, and as near as can be consistent with our general plan. But seeing how little both of territory and population is reserved from the jurisdiction of the Commissioners, we think it deserving of consideration whether it would not be expedient on the whole to exclude these districts entirely from the general scheme, and to vest in the Commissioner of each district, instead of a civil and session judge, the powers to be given to that officer in other districts, to be exercised under the rules by which the Commissioner is guided in the performance of similar judicial functions within the limits of his present jurisdiction, retaining the principal sudder ameen's court at Itchapore, and establishing one at Vizagapatam, with the same powers as will be exercised by the like courts elsewhere, subject to the supervision and appellate authority of the Commissioner, and who, we may observe, is already vested with all the powers of the present courts of circuit and appeal.

47. In

* Parkrow Pettah, 131 miles.—Table of Roads, No. 22.

† Ganjam Pettah, 132 miles.—Table of Roads, No. 22.
This town, we apprehend, is very near to the northern extremity of the country, subject to the jurisdiction of the ordinary court under Act XXIV. of 1839.

‡ The whole population of the two districts being estimated at 1,600,000.

§ Proceedings, 20 April 1840, submitted herewith.

(B.) No. V.
Madras Judicial System.

47. In offering this suggestion, we do not mean to intimate any opinion upon the fitness of the plan for the administration of civil and criminal justice which we find to be in operation throughout by far the greater part of these two districts, under the Act No. XXIV. of 1839. We apprehend the present arrangement is not intended to be permanent, but while it continues, it precludes the complete introduction of the scheme we have proposed, and it has occurred to us that it may be more convenient in the meantime to employ the agency of the Commissioner in each district, to supply the place of the provincial courts of appeal and circuit, within the narrow but long extended tract now subject to the jurisdiction of those courts, than to appoint a civil and sessions judge for the two districts, under special provisions.

48. There is only one district in which it appears to us to be necessary to provide for the trial of cases cognizable by the session judge at a detached station. This is Canara. At present the judge on circuit holds sessions for the trial of cases arising in the northern talooks of Canara, under the courts at Honore and Sirsee, at Honore: and looking at the distance of Honore, and other considerable places beyond Honore, from the head station, Mangalore, we apprehend that it is requisite to make a special provision for this case. We see no other way to provide for it at present, than by requiring the session judge to hold his court at Honore at least once in every year. In the last six months of 1838, there were eight cases involving 14 persons committed for trial before the court of circuit by the principal sudder ameens of Honore and Sirsee. Assuming that the ordinary number of cases is about the same, we may reckon that this duty, including his journey, will not occupy the session judge more than one month out of six. For five months consecutively, therefore, he will be stationed at Mangalore, and hold sessions, as there shall be occasion, for the immediate trial of all cases committed to him. It appears from the proceedings of the Sudder Adawlut, dated 22d September 1834, that they then thought that one of the two principal sudder ameen's courts in the northern Canara might be dispensed with. If it is still thought advisable to unite the jurisdiction of Sirsee with that of Honore, we would suggest that the talook of Cundapore, now subject to Honore, be separated, and placed under the court of Mangalore, to give the people the benefit of more speedy justice in the criminal department, by the session court sitting there continually during 10 months of the year.

Distance of Cundapore from Mangalore, 58 miles.

49. There is at present an assistant judge attached to the zillah court of Canara, to aid the judge in the despatch of civil business. It appears to us that it will probably be necessary to continue this officer to aid the civil judge in the disposal of appeals from the sudder ameens and district moonsiffs. We observe that the number of appeals* from sudder ameens is unusually large in this district.

Districts - - 17
United - - - 2
Districts - 19

50. The annexed paper (A.) shows the existing establishment of provincial judges, zillah judges, assistant judges, and principal sudder ameens, as it stood at the end of June last, and the establishment proposed to be substituted. To the four provincial courts were attached 12 judges; in the 19 districts subject to the provincial courts there were 12 zillah judges, 9 assistant judges, and four principal sudder ameens. We propose that, to the 19 districts, there shall be appointed 18 civil and session judges, to perform the functions, civil and criminal, of the judges of the provincial courts, and at the same time to take a large part, or the whole, where it is possible, of the civil appeal jurisdiction, now vested in the zillah and auxiliary courts, and that there shall be ordinarily an assistant judge or principal sudder ameen to each district, and one or more extraordinary to particular districts, where there are at present detached auxiliary courts, which it may be thought expedient to continue.

1 Civil and Session Judge to each 17
United - - - 1
Civil & Session Judges 18

District of Malabar:
Tellicherry - - 1
Cochin - - - 1
— 2

District of Canara:
Honore - - - 1
Sirsee - - - - 1
— 2

District of Cuddapah:
Cumbum - - - - 1
—
Total - - - 5

51. The number of such courts at present existing is five; but it would appear from the proceedings of the Sudder Adawlut above referred to, that two of them, one at Sirsee, in Upper Canara, and one at Cumbum, in the Cuddapah district, may be dispensed with. If this can be done without inconvenience, the number of assistant judges or principal sudder ameens required, according to our plan, will be 22, otherwise

* In the last 6 months of 1838 the number filed was 65, the number depending at the end of 1838 was 98.

otherwise 24. Besides, we have suggested that it may be necessary to continue the assistant judge now attached to the zillah court of Canara to aid the civil judge in disposing of appeals. The number required, therefore, will be 23, if the two auxiliary courts are dispensed with, or 25, if they are continued.

Assistant Judges, or Principal Sudder Ameens Ordinary, at 1 for each District	19
Add, for Auxiliary Court Extraordinary	5
	24
Deduct, if Sirsee and Cumbum are not continued	2
Total	22

52. We have proposed for the present, that the subordinate civil and criminal judge in each district shall be either an assistant judge or a principal sudder ameen, at the discretion of Government, with a view to admit of the appointment of both covenanted civil servants and persons of other classes in such proportions as may be thought fit. We look eventually to dispensing with assistant judges altogether, and placing all the subordinate civil and criminal judges upon the footing of principal sudder ameens; but we think it expedient that this change should be brought about gradually, and probably it would not be possible to effect it immediately.

53. If the number of subordinate civil and criminal courts be 24, and 12 assistant judges and 12 principal sudder ameens be entertained in the first instance, the financial result of the proposed scheme so far will be as noted below*. But there will be a further saving by discontinuing the registers of the provincial and zillah courts, and substituting sudder ameens for the latter; the total saving it appears will be 2,62,800 rupees per annum. Including Sirsee and Cumbum.

54. If the two auxiliary courts of Sirsee and Cumbum are abolished, there will still be a further reduction of 12,000 rupees per annum, on account of the salaries of the principal sudder ameens, exclusive of establishments.

55. The present charge of the native establishments of the provincial courts, we conceive, will cover the cost of additional establishments under the proposed arrangement, consequently we do not anticipate any material drawback from the above result. It appears, therefore, that the contemplated reform of the courts is recommended by considerations of economy, as well as by the promise it holds out of very greatly improved efficiency.

56. The whole saving, however, will not be immediate, as four judges will be employed at the stations of the provincial courts to dispose of the pending suits, and probably both these judges, and the other provincial judges, transferred to the civil and session judges of zillahs, will be permitted to enjoy the salaries they at present receive; but eventually, if principal sudder ameens are substituted everywhere for assistant judges, there will be again a very considerable reduction in the judicial charges.

57. We

* Old Establishment.

	SALARIES Per Annum.
12 Provincial Judges	4,62,000
12 Zillah Judges	3,36,000
9 Assistant Judges	1,51,200
4 Principal Sudder Ameens	24,000
	9,73,200
	7,94,400
	1,78,800

New Establishment.

	SALARIES Per Annum.
18 Civil Sessions Judges	5,04,000
12 Assistant Judges	2,01,600
12 Principal Sudder Ameens	72,000
1 Assistant to Civil Judge, Canara	16,800
	7,94,400

3 Provincial Registers	25,200
11 Zillah Registers	85,200
According to Statement in Letter from Chief Secretary to Madras Government, dated 20 January 1838	110,400
Deduct, Pay of 11 Sudder Ameens	26,400
Net Remainder	84,000
Brought down	178,800
Total Saving	2,62,800

(B.) No. V.
Madras Judicial System.

57. We have suggested the principal provisions which have occurred to us as necessary to give effect to the plan we have recommended; but probably, upon a close view of details, it will be found that other subsidiary provisions are requisite to render the system complete. These will readily suggest themselves to the experienced judges of the Sudder and Foujdary Adawlut; and if our scheme should be approved in general, we would recommend that they be requested to submit a note of all the points of detail beside what we have adverted to, for which provision must be made, in order that the purpose intended may be fully accomplished.

58. Under the rules we have proposed, there will be some increase to the business of the Courts of Sudder and Foujdary Adawlut, but not more, we think, than the present number of judges will be equal to, if they fully avail themselves of the latitude allowed to them by Regulation VIII. of 1831, of exercising singly all the powers of the court, so far as to confirm orders and decisions of subordinate courts, and to pass sentences, not capital, in concurrence with the trying judge in referred trials. At present, it appears they seldom pass decisions singly. In the last six months of 1838, only one judgment was passed in the Sudder Adawlut by a single judge, and in the Foujdary Adawlut only four cases out of 46 were disposed of by judges sitting singly. The 46 cases comprehended 96 prisoners, of whom 64 were convicted and sentenced to punishment, and of these "only one was considered not convicted by the judges of circuit."

59. Upon the question of extending the powers of single judges, we propose to submit our sentiments in a separate report. But in order to enable the judges of the Sudder Adawlut, without departing from the principle of the above Regulations, to do as much as possible to "expedite the decision of civil causes," we now recommend that the provisions contained in Section 2, Regulation IX. of 1831, and Section 15, Regulation VII. of 1832, of the Bengal Code, be applied to them; which provisions we think it advisable to extend also to the civil judges, agreeably to Clause 3, Regulation V. of 1831 of the above code, and to Act No. VII. of 1831.

See Preamble to the Regulation.

60. We attach much importance, particularly to the provision which authorizes a judge, if, on hearing a petition of appeal, he is of opinion that no sufficient ground has been shown to impugn the correctness or justness of the decision or order appealed against, to confirm the same without requiring the attendance of the opposite party, and without a revision of the whole proceedings. We consider this provision well calculated to prevent unfounded appeals being preferred merely to gain time, or to harass an opponent, and by saving the time of the court it will of course expedite the administration of justice to honest suitors.

61. We would also recommend that the provision of Section 4, Regulation IX. of 1831, be applied to single judges of the Foujdary Adawlut, to facilitate and expedite the proceedings of that court.

62. By the change of system proposed, the delay which now occurs between the apprehension and trial of prisoners in cases subject to the jurisdiction of the circuit courts will be prevented. But there is also under the present system a great delay in referred cases, between the trial and passing sentence by the Foujdary Adawlut. On the average of the last six years it has extended to 109 days, viz. 81 $\frac{3}{6}$ between the trial and reference of the record, and 27 $\frac{3}{6}$ between the receipt of the record and sentence. By the operation of Act I. of 1840, which authorizes the judge of the Foujdary Adawlut to dispense with a futwa from their law officers, the average delay in that court has been diminished to 11 days. The delay before reference arises from the necessity of translating the record. The judges of the Foujdary Adawlut, in their proceedings under date the 22d of September 1834, with the view of removing this cause of delay, recommended that the judge trying referable cases should be required to transmit only the original record in the native language, with his own notes of the trial in English, and that the requisite translations should be made in their office. Under this arrangement, they said they had little doubt that the average delay in the circuit court would be reduced to a few days. The government approved of the recommendation of the judges on this point, observing that the requisite translations would no doubt be better and more expeditiously done in the office of the Foujdary Adawlut, and that in many cases it would probably be found that the translation

From 1834 to 1839.

translation of the whole record might be dispensed with, the judge reviewing the proceedings having the assistance of the notes of the judge who conducted the trial. We concur with the judges and the government in thinking that this measure will tend greatly to expedite the disposal of referred cases, and we recommend that it be adopted.

63. The translation of the record being dispensed with, the government thought that the record of every trial might be forwarded within three days from the date on which it is closed. If this be done generally, and we see no reason why it should not, and the delay in the Foujdary Adawlut does not exceed the present average of 11 days, the average interval between trial and sentence will be reduced from 109 days to 14 *.

64. A similar arrangement we would recommend to be adopted in appeals to the Sudder Adawlut. There is at present a very great delay between the admission of appeals to that court and the transmission of the record from the courts which passed the decrees appealed against. From the statement of appeals pending in the Sudder Adawlut, 1st January 1839, transmitted 5th February 1840, it appears that in three cases only out of 21 was the record transmitted within a year, and in some cases not within two years. In two cases in which appeals were admitted respectively, on the 10th and 13th October 1837, the records had not been received when the statement was made up, 5th February 1840.

65. We imagine that the delay is to be attributed chiefly to the provision by which the lower courts are required to furnish translations in English of all the proceedings, documents, and papers recorded in the case. At present, no doubt many translations are made which, if the judge trying the appeal had to select, would be dispensed with. Sometimes, probably, no translations would be required. This would be the case, for example, when the judge on hearing the petition of appeal, and reading the decree, should consider the petition to be groundless, and determine to dismiss the appeal, without summoning the defendant under the provision to that effect which we have recommended. Under the proposed arrangement, therefore, we conceive that both less work of this kind would be required, and that the work required would be done more speedily. The disposal of appeals to the Sudder Adawlut would thus be very considerably expedited.

We submit this our Report for the consideration of your Lordship in Council.

(signed) *A. Amos.*
C. H. Cameron.
F. Millett.
D. Eliott.
H. Borradaile.

Indian Law Commission,
21 August 1840.

Foujdary Adawlut.

From *W. Douglas,* Esq. Register Foujdary Adawlut, to the Secretary to the Indian Law Commission. No. 38.

Sir,

With reference to your letter dated 5th November 1839, I am directed by the judges of the Court of Foujdary Adawlut to subjoin the annexed statement, showing in the trials referred to the Foujdary Adawlut the delay, 1st, between the apprehension of the prisoner and his trial by the court of circuit; 2dly, between his trial by the court of circuit and the receipt of that record by the Foujdary Adawlut; and, 3dly, between the receipt of that record and passing of the sentence by the Foujdary Adawlut, for every year since 1833, up to the end of the year 1839, compared with the three preceding years to which you refer. Legis. Cons. 5 Oct. 1840.

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*Allowance of course must be made for the time taken up in the transit of the record.

Number of Trials Referable actually disposed of by the Foujdary Adawlut during		In preliminary Inquiry, between Apprehension and Trial.			In the Circuit Court, between Trial and Reference of the Record.			In the Foujdary Adawlut, between the Receipt of the Record and Sentenee.			Total between Trial and Sentence.		
YEAR	Number of Trials.	Shortest.	Longest.	Average.	Shortest.	Longest.	Average.	Shortest.	Longest.	Average.	Shortest.	Longest.	Average.
1831	123	10	457	127	2	449	98	8	296	63	41	582	291
1832	109	10	389	120	8	269	91	4	114	23	50	558	236
1833	111	12	518	152	9	245	68	15	241	49	83	603	271
Average - -		- -	- -	133	- -	- -	85 2/3	- -	- -	45	- -	- -	266
1834	299	12	562	205	5	472	156	5	184	37	50	862	399
1835	205	17	934	203	6	603	113	6	167	25	50	1,029	342
1836	124	16	611	130	4	546	55	7	119	24	51	817	209
1837	227	6	1,046	142	7	269	65	6	175	25	46	1,158	233
1838	125	19	799	132	6	194	37	9	145	22	46	860	192
1839	113	13	1,185	173	6	179	63	9	185	32	53	1,352	269
Average - - -				164 1/6	- -	- -	81 3/6	- -	- -	27 3/6	- -	- -	274

2. In this statement, however, no distinction is made between the referable trials of which this court at once disposed and those which it was necessary for them to return to the interior, for further evidence, before they finally disposed of them. This distinction is made in the two subjoined statements.

TRIALS at once Disposed of.

Number of Trials Referable actually disposed of by Foujdary Adawlut during		In Preliminary Inquiry, between Apprehension and Trial.			In the Circuit Court, between Trial and Reference of the Record.			In the Foujdary Adawlut, between the Receipt of the Record and Sentence.			Total between Trial and Sentence.		
YEAR	Number of Trials.	Shortest.	Longest.	Average.	Shortest.	Longest.	Average.	Shortest.	Longest.	Average.	Shortest.	Longest.	Average.
1834	287	12	562	207	5	472	157	5	184	35	50	862	399
1835	194	17	934	206	6	603	111	6	81	21	50	1,029	340
1836	113	16	611	131	4	546	58	7	55	18	51	817	207
Average - -		- -	- -	181 1/3	- -	- -	108 2/3	- -	- -	24 2/3	- -	- -	215 1/3
1837	209	6	1,046	144	7	269	68	6	56	18	46	1,158	232
1838	120	19	799	133	6	194	33	9	53	17	46	860	184
1839	91	15	389	135	6	174	65	9	57	22	50	556	222
Average - - -				137 1/3	- -	- -	55 1/3	- -	- -	19	- -	- -	212 2/3

TRIALS which it was found necessary to return to the Lower Courts for further Evidence, &c.

YEAR.	Number of Trials.	In Preliminary Inquiry, between Apprehension and Trial.			In the Circuit Court, between Trial and Reference of the Record.			In the Foujdary Adawlut, between the Receipt of the Record and Sentence.			Total between Trial and Sentence.		
		Shortest.	Longest.	Average.	Shortest.	Longest.	Average.	Shortest.	Longest.	Average.	Shortest.	Longest.	Average.
1834	12	50	354	165	10	297	125	54	182	105	160	624	397
1835	11	47	405	144	16	359	146	57	167	96	144	823	387
1836	11	48	214	119	6	50	26	49	119	81	134	336	228
Average - -		- -	- -	142 2/3	7	- -	99	- -	- -	94	- -	- -	337 1/3
1837	18	18	288	121	32	104	42	31	175	81	97	407	245
1838	5	95	148	111	6	128	84	74	145	105	237	391	302
1839, exclusive of five Thug cases at Vizagapatam -		13	321	141	106	143	40	26	185	79	82	511	260
Five Thug cases at Vizagapatam, in 1839	22	807	1,185	1,007	- -	103	106	61	61	61	974	1,352	1,174
Average, excluding five Thug cases -				124 1/3	- -	- -	55 1/3	- -	- -	88 1/3	- -	- -	269
— including ditto - -				469	- -	- -	90 2/3	- -	- -	108 2/3	- -	- -	660 1/3

3. Finally,

3. Finally, the judges direct me to subjoin a further statement explanatory of the delay in this court for the period in question.

—	1835.	1835.	1836.	1837.	1838.	1839.	—	1835.	1835.	1836.	1837.	1838.	1839.
Trials disposed of at once within Days. 10	9	14	9	40	17	1	Trials disposed of after a second reference to the interior for further evidence within Days 30	–	–	–	–	–	1
20	117	106	72	120	81	45	40	–	–	–	3	–	2
30	65	47	24	39	17	28	50	–	–	1	2	–	4
40	24	14	4	7	1	12	60	2	1	1	1	–	2
50	18	4	3	2	1	4	70	1	3	3	3	–	5
60	13	4	1	1	3	1	80	1	2	1	1	1	1
70	5	–	–	–	–	–	90	2	1	–	2	–	1
80	1	4	–	–	–	–	100	1	–	2	2	–	–
90	6	1	–	–	–	–	110	–	–	1	2	3	1
100	5	–	–	–	–	–	120	–	–	2	1	–	2
110	3	–	–	–	–	–	130	1	1	–	–	–	2
120	4	–	–	–	–	–	140	2	2	–	–	–	1
130	10	–	–	–	–	–	150	–	–	–	–	1	–
140	3	–	–	–	–	–	170	1	1	–	–	–	–
150	1	–	–	–	–	–	180	–	–	–	1	–	–
160	2	–	–	–	–	–	190	1	–	–	–	–	1
190	1	–	–	–	–	–							
	287	194	113	209	120	91		12	11	11	18	5	22

4. I am further directed to add, that since the promulgation of Act I. 1840, dispensing with a futwa from the law officers of the Foujdary Adawlut, the following has been the delay in this court:

Number of trials - - - - - - - -	27
Shortest delay - - - - - - - -	3
Longest delay - - - - - - - -	25
Average delay - - - - - - - -	11

5. It will be observed, that the average delay in this court had been reduced from 45 to little more than 27 days, or, excluding the trials returned for further evidence, in which the delay averaged 88 days, to 19 days, before Act I. 1840 was passed. It has since been diminished to 11 days, a result, it will be hoped, satisfactory.

6. It will be observed, that in the last year in particular, the trials referred back for further evidence were much more than usually numerous.

7. In these trials the average delay in the courts of circuit has also been diminished from 85 to 81, or, excluding the trials returned for further evidence, to 55 days; but the number of referred trials in 1834 was threefold what is usual. It is expected that this delay may be still further reduced.

8. By far the greatest delay which occurs in these cases is still between the apprehension and trial of the prisoners; it has augmented from 133 to 164 days; but this arises chiefly from the result of the famine in 1833, augmenting crime to a vast extent during the years 1834 and 1835, so as then to increase the number of trials referred to this court three and twofold respectively during these two years. The delay has since decreased to its usual period of 133 and 135 days during the two last years in the trials not returned for further evidence, and so long as the gaols are delivered only once in six months, it cannot be reduced much beyond this period. But in the last year it has been augmented in the cases returned for further investigation. This, it will be perceived, has arisen chiefly from five Thug cases at Vizagapatam, which have therefore been classed separately, and is to be attributed apparently to intentional delay on the part of the Thug department in bringing Thug approvers to trial. The judges have taken due notice of this delay, and have used their utmost efforts to prevent its recurrence. The delay in the trial of these cases it will be perceived was at the least 807, and extended in one case to 1,185 days, protracting the decision in one case to 1,352 days, and thereby unusually augmenting the average delay before trial.

I have, &c.

Foujdary Adawlut, Register's Office, 1 May 1840. (signed) *W. Douglas*, Register.

(B.) No. V.
Madras Judicial System.

(D.)

A REGULATION to provide for the Trial and Decision of all Original Suits and Appeals which may be depending before the Provincial Courts of Appeal on the of 1832.

Preamble. WHEREAS the provincial courts of appeal, established under the provisions of Regulation IV. of 1802, have been superseded by the enactment of Regulation of 1832, and it is necessary that provision should be made for the trial and decision of all original suits and appeals depending before those courts, the following rules have been enacted to be in force from the date of their promulgation.

Clause 2 & 3, Sect. 2, Regulation VIII. of 1831, rescinded; a single judge to be appointed to each of the four provincial courts, with authority to decide all original suits and appeals which may be depending before those courts at the promulgation of this Regulation.

2. Clauses 2d and 3d, Section 2, Regulation VIII. of 1831, are hereby rescinded.

3. First, in modification of the provisions of Clause 1, of Section 2, of Regulation VIII. of 1831, it is hereby enacted, that a single judge shall be appointed to each of the four provincial courts of appeal established under the provisions of Regulation IV. of 1802, and shall have authority to decide all original suits and appeals which may be depending before those courts on the date of the promulgation of this Regulation.

In what cases an appeal of right shall lie to the court of Sudder Adawlut.

Second. An appeal of right shall lie to the court of Sudder Adawlut from all decrees of such single judge, which may reverse or alter the decision of the lower court.

In what cases the decree of such single judge shall be deemed final. Exception.

Third. The decrees of such single judge, confirming the decision of the lower court, shall be final, unless a special appeal therefrom shall be admitted by the court of Sudder Adawlut.

No original suit or appeal to be filed in the provincial courts from and after the date of the promulgation of this Regulation.

4. From and after the date of the promulgation of this Regulation, no original suit or appeal shall be filed in the provincial courts established under the provisions of Regulation IV. of 1802.

(signed) *D. Eliott*,
Acting Register.

(A true copy.)

(signed) *J. P. Grant*,
Officiating Secretary.

(A true copy.)

(signed) *H. Chamier*,
Chief Secretary.

(No. 75 A.)

EXTRACT from the Proceedings of the Sudder Adawlut, under date the 20th April 1840.

READ again extract from the Minutes of Consultation in the Revenue Department, under date the 6th of January 1840, No. 16, forwarding an extract from a letter from Mr. Arbuthnot, the agent to the Governor of Fort St. George, in Vizagapatam, dated 13th December 1839, and directing the court of Sudder Adawlut to submit their opinion, with reference to the statement contained therein, that no more than 352 villages in the Vizagapatam district remain attached to the zillah court, whether such a court is absolutely necessary for administering to the judicial wants of so limited a jurisdiction; and if not, to state what arrangement they would propose to substitute in lieu of it.

Also read returns, dated respectively the 24th of February and 30th March 1840, made by the provincial court in the Northern Division to the precepts of the Sudder Adawlut of the 20th of January and 2d March 1840, directing the provincial court to call upon the agents to the governor in the Ganjam and Vizagapatam districts, to submit a statement showing the aggregate amount of revenue and the extent of population of the villages belonging to the Vizagapatam

patam and Ganjam districts, attached to the zillah court of Vizagapatam, and at the same time directing the provincial court to submit a statement, showing the number of suits now on the file of the zillah court of Vizagapatam.

Also read letter from the chief secretary to Government, dated the 1st April 1840, submitting, for the consideration of the Sudder Adawlut, a representation from Tandavarogen, the sudder ameen attached to the court of the principal sudder ameen at Itchapoor, suggesting the substitution of an auxiliary court or native court at Chicacole, for the zillah court at Vizagapatam, and the principal sudder ameen's court at Itchapoor.

1. It appears from the returns of the provincial court in the Northern Division recorded above, that in the Vizagapatam district, 351 villages, with a population of 140,536 persons, and in the Ganjam district, 156 villages, with a population of 50,060 persons, total 507 villages, and 190,596 persons, are all that are left within the jurisdiction of the zillah court at Vizagapatam, and the court of Sudder Adawlut therefore are of opinion, notwithstanding the present state of the Vizagapatam file, upon which there were on the 20th of last month 322 original suits, and 103 appeals, total, 425 cases remaining undecided, that a zillah court is not "absolutely necessary for administering to the judicial wants of so limited a jurisdiction," supposing some other adequate arrangements can be made.

2. The substitution of one court to be re-established at Chicacole in lieu of the two now at Itchapoor and Vizagapatam, as proposed by the sudder ameen of the former station, would, in the opinion of the court of Sudder Adawlut, render the condition of the people worse than it was previously to the abolition of the court at Chicacole; the great distance of that station from the northern parts of Ganjam has always been strongly objected to, and was one of the reasons which induced Mr. Russell to suggest Itchapoor as a convenient station for the erection of a court for part of the Ganjam district, and in the opinion of the Sudder Adawlut it would be extremely objectionable to subject the people in the northern parts of Vizagapatam to the inconvenience of going so far as Chicacole for justice.

3. The provincial court in the Northern Division state, that they have "no hesitation in declaring their opinion that a zillah court cannot be required for administering to the judicial wants of the trifling extent of country and population comprised within the present jurisdiction of the Vizagapatam zillah court; but they submit if the Vizagapatam be too limited, that of the Governor's agent is too unwieldy, including the zemindaries of Vizianagarum and Bobely, the civilized and enlightened population of which have thus been suddenly deprived of that degree of protection of life, property, and liberty which has been hitherto enjoyed by them under our court of judicature, apparently without their having been at all consulted about the matter, and contrary, it is supposed, to the intention of Mr. Russell; and the judges therefore beg leave respectfully to suggest the expediency of replacing these two districts, or at least that at Vizianagarum, under the jurisdiction of the zillah court of Vizagapatam, which will thereby be rendered sufficiently extensive."

4. The court of Sudder Adawlut entirely agree with the judges of the provincial court, that the jurisdiction of the government agent of Vizagapatam, including the large zemindaries of Vizianagarum and Bobely, will be found too unwieldy, and it would appear to be a matter worthy the consideration of Government whether it would be expedient to adopt the suggestion of the provincial court, and replace the two large zemindaries, "or at least that of Vizianagarum," under the jurisdiction of the zillah court of Vizagapatam; but if such arrangement would not meet the views of Government, the court of Sudder Adawlut are of opinion, that the other alternative should be adopted, viz. the substitution of an assistant judge's court, upon the footing of an auxiliary court, for a zillah court, in which case, however, it will be necessary, with reference to the letter from this court addressed to Government, under date the 5th July 1838, to modify the regulations referred to in paragraphs 6 to 10 of that letter, by an Act of the Supreme Government, and this arrangement would, in the opinion of the Sudder Adawlut, be far preferable to the other alternative alluded to at the conclusion of this court's letter to Government of the 5th July 1838, of attaching the courts of Vizagapatam and Itchapoor to the zillah of Masulipatam. *See* Appendix.

5. The substitution of an auxiliary for a zillah court at Vizagapatam, would no doubt be an economical arrangement. The situation of register to the court might be forthwith abolished, and the officer holding the appointment might be

(B.) No. V.
Madras Judicial System.

transferred to the zillah of Bellary, where the services of a register are much required. But it is presumed that the European officer now in charge of the court of Vizagapatam will be allowed to retain his present allowances until otherwise provided for.

Ordered, that extract from these proceedings be forwarded to the chief secretary to Government for the purpose of being laid before the Right honourable the Governor in Council.

(True extract.)

(signed) *W. Douglas,*
Register, Judicial Department.

(No. 176/384.)

EXTRACT from the Minutes of Consultation, under date the 12th May 1840.

Read the following extract from the proceedings of the Court of Sudder Adawlut.

(Here enter 20th April 1840.)

(No. 75 A.)

Para. 1. Under the opinion expressed by the court of Sudder Adawlut in the proceedings recorded above, that a zillah court is not absolutely necessary for administering to the judicial wants of so limited a jurisdiction as that left under the operation of the ordinary regulations in the Vizagapatam district, the Right honourable the Governor in Council resolves that the orders of Government contained in the extract from the Minutes of Consultation, dated 22d June 1838, No. 619, for the abolition of the zillah court recently transferred to Vizagapatam, and the establishment of an auxiliary court in its stead at that station, be carried into effect at the ealiest practicable period.

2. His Lordship in Council resolves to attach the new court at Vizagapatam and the court at Itchapore to the zillah of Masulipatam.

3. The appeals which may in consequence be expected to be made to the zillah court at Rajahmundry, the Right honourable the Governor in Council does not think are likely to be so numerous as to embarrass that court; should it however prove to be otherwise, his Lordship in Council will be prepared to attach one or more additional sudder ameens to it, and to apply such other remedial measures as may be found to be necessary, such, for instance, as restricting the original jurisdiction of the zillah judge to suits beyond the jurisdiction of his subordinate, which will afford him leisure for the disposal of appeals until the decision of the Government of India shall be formed upon the introduction of the contemplated reforms in the judicial system under this presidency, which have already for some time past been under its consideration, and may therefore be expected to be disposed of at no very distant period.

4. The judges of the court of Sudder and Foujdary Adawlut will be pleased to issue the necessary orders for carrying these Resolutions into effect, and will prepare and submit the usual proclamation for publication in the official Gazette for general information.

5. As Mr. Glass on the abolition of the zillah court will, until otherwise provided, hold charge of the court to be established in its stead, he will of course be entitled to draw his present allowances until nominated to an office of equal emolument.

(A true extract.)

(signed) *H. Chamier,*
Chief Secretary.

(No. 97.)

EXTRACT from the Proceedings of the Sudder Adawlut, under date the 22d May 1840.

READ extract from the Minutes of Consultation, under date the 12th of May 1840, containing the Resolution of the Right honourable the Governor in Council, that the zillah court recently transferred to Vizagapatam be abolished, and that an auxiliary court be established in its stead at that station, and that the new court at Vizagapatam and the court at Itchapore be attached to the zillah of Masulipatam, directing also the court of Sudder and Foujdary Adawlut to issue the necessary orders for carrying these Resolutions into effect at the earliest practicable period, and directing the court to prepare and to submit the usual proclamation for publication in the official Gazette, for general information.

1. Ordered accordingly, that the accompanying draft of a proclamation notifying the abolition of the zillah court at Vizapagatam from and after the 1st of June next, and the establishment of an auxiliary court in its stead, be transmitted to the chief secretary to Government, for publication in the official Gazette, if approved of by Government.

2. Ordered further, that a copy of the Resolution of Government, recorded above, be furnished to the provincial court in the Northern Division, for their information and guidance, and with instructions to communicate a copy thereof to the magistrates of Ganjam and Vizagapatam, and to the judges at Zizagapatam and Rajahmundry, and to the principal sudder ameen at Itchapore, for their information and guidance respectively.

3. The allotment of the district moonsiffs, under the two courts at Vizagapatam and Itchapore, as sanctioned by government under date the 1st of November 1839, will not be disturbed; but, adverting to the state of the business before the court at Vizagapatam, the court of Sudder and Foujdary Adawlut are of opinion that, on the reduction of the zillah court at Vizagapatam to an auxiliary court, a corresponding reduction should be made in the present authorized establishment at Vizagapatam. The court of Sudder and Foujdary Adawlut would propose that it be fixed on a scale approximating as nearly as possible to that sanctioned by government in June 1836, for the late auxiliary court at Vizagapatam; and a list of the proposed establishment for the new court at that station is accordingly herewith submitted for the sanction of the Right honourable the Governor in Council.

Ordered, that extract from these proceedings be forwarded to the chief secretary to government, for the purpose of being laid before the Right honourable the Governor in Council.

Ordered further, that paragraphs 1 and 2 of these proceedings be forwarded for the information and guidance of the provincial court of appeal and circuit in the Northern Division.

(True extract.)

(signed) *W. Douglas*, Register.

PROCLAMATION.

WHEREAS the Right honourable the Governor in Council of Fort St. George, by virtue of the powers vested in him by Regulation I. of 1821, and Section 2, Regulation I. of 1827, has deemed it expedient to abolish the zillah court heretofore held at Vizagapatam, and, in the stead thereof, to establish an auxiliary court at that station, to be attached to the zillah court at Masulipatam. All persons, therefore, are required to take notice, that from and after the 1st day of July next, the said zillah court at Vizagapatam will be abolished, and an auxiliary court will be established in lieu thereof, such parts of the Ganjam and Vizagapatam districts as may remain subject to the operation of the ordinary regulations being from that date attached to the zillah of Masulipatam.

The jurisdiction of the said auxiliary court shall extend over all places and persons heretofore subject to the jurisdiction of the zillah court of Vizagapatam.

(signed) *W. Douglas*, Register.

(B.) No. V.
Madras Judicial System.

Proposed Establishment of the Auxiliary Court at Vizagapatam.

	Rs.	As.
1 sheristadar	80	–
1 nazir	40	–
1 head translator	70	–
1 assistant ditto	40	–
1 head English writer	35	–
1 English writer	20	–
1 record keeper	30	–
1 assistant ditto	10	–
1 tawabnierees	28	–
1 assistant ditto	17	8
1 gomastah	21	–
1 ditto	16	–
1 ditto	15	–
1 ditto	14	–
1 ditto	10	–
1 head moonshee	28	–
1 sub - ditto	21	–
1 shroff	10	8
1 mochy	5	–
Carried forward	511	–

	Rs.	As.
Brought forward	511	–
1 ructawan	3	8
1 sweeper	3	8
1 head peon	10	8
4 deloyehs at 7 *Rs. each*	28	–
14 peons at 5½	73	8
Rupees	630	–
Government vakeel	15	–
Gaol Establishment:		
1 gaoler	20	–
1 jemedar	14	–
1 duffadar	7	–
18 peons at 5 *Rs. each*	90	–
Rupees	131	–
Total *Rupees*	776	–
1 sudder ameen	200	–
Ditto establishment	45	–
Total, including Sudder Ameen	1,021	–

(No. 220/430.—Judicial Department.)

EXTRACT from the Minutes of Consultation, under date the 27th May 1840.

Read the following extract from the proceedings of the Sudder Adawlut:

(Here enter 22 May 1840.)

1. THE Right honourable the Governor in Council approves of the proclamation submitted with the foregoing proceedings, and desires that it be published in three alternate numbers of the official Gazette for general information, the date fixed therein for the abolition of the zillah court of Vizagapatam, and the establishment of an auxiliary court in its stead, being altered from the first proximo to the first of the following month, in order that all parties concerned may have due notice of the same.

2. The Right honourable the Governor in Council approves of the directions reported in the 3d paragraph respecting the allotment of the district moonsiffs under the courts of Vizagapatam and Itchapore; and his Lordship in Council sanctions the establishment proposed to be entertained for the contemplated new court, amounting to *Rs.* (1021), one thousand and twenty-one per mensem.

(True copy.)

(signed) *W. Douglas*, Register.

(A true extract.)

(signed) *H. Chamier*, Chief Secretary.

APPENDIX.

(No. 99.)

From *W. Douglas*, Esq. Register, to the Chief Secretary to Government.

Sir,

I AM directed by the judges of the court of Sudder Adawlut to acknowledge the receipt of an extract from the Minutes of Consultation, under date the 22d ultimo (No. 619), on the subject of the measures proposed to be adopted for the better administration of the hill zemindaries and other tracts in the zillahs of Ganjam and Vizagapatam.

2. In para. 1 of the extract from the Minutes of Consultation above referred to, it is stated that it has been resolved by government, "that not only the hill zemindaries, but also all the ancient zemindaries in Ganjam and Vizagapatam, whether they be still in the possession of individuals, or have fallen into the hands of government by forfeiture or other cause, should be exempted from the operation of the ordinary laws;" and that "the Supreme Government" have, "in para. 8 of its officiating secretary's letter, dated the 16th of April last, desired that the zemindaries or other tracts which are to form the separate jurisdiction of the Commissioner, be specifically mentioned in the proposed new law for their future administration."

3. The court of Sudder Adawlut inferred, from para. 4 of the letter from the officiating secretary to the government of India, dated 16th April last, that, under the scheme proposed by the government of India, "the Commissioner would have no jurisdiction over the low lands immediately adjacent to the hill zemindaries," but merely "concurrent jurisdiction, as magistrate, over the campaign tracts immediately adjoining the hill zemindaries," when, as under the Bengal Code, the Commissioner would be invested with authority to call, upon his own responsibility, for military aid from the nearest station, in case of insurrection or other emergency; and on this point, therefore, the court of Sudder Adawlut have directed me respectfully to solicit the further orders of government with reference to the Minutes of Consultation of the 14th May 1838, requiring their opinion on the whole arrangements proposed.

4. In the 3d para. of the Minutes of Consultation, under date the 22d ult., it is stated that, as the arrangement originally contemplated by government is about to be superseded by that suggested by the Supreme Government, of uniting in one functionary the powers of Commissioner in the hill tracts within the districts of Ganjam and Vizagapatam, the Right honourable the Governor in Council is of opinion that, under this arrangement, it will not be necessary that the jurisdiction of either of the courts to be established in them should exceed the revenue charges of the remainder of those provinces, but should be made strictly to correspond with their respective reduced sizes, by which measure the Right honourable the Governor in Council contemplates that an auxiliary court, instead of a zillah court, will be found fully adequate for all the judicial wants of the district of Vizagapatam; and that the further reduction of charge, which will be effected by such substitution, will be available for meeting the extra charge which will have to be incurred in the establishment of the contemplated separate and independent commissionership for the hill tracts of the two provinces.

5. In the proposed measure of abolishing the zillah court of Chicacole difficulties have suggested themselves to the court of Sudder Adawlut; and the arrangement of establishing an auxiliary court at Vizagapatam in its stead may possibly involve a modification of the regulations to a considerable extent.

6. If the zillah court of Chicacole is abolished, it will be necessary to make provision for the trial of appeals from the decision of the assistant judge in suits not exceeding 1,000 rupees, which, under the law as it now stands, lie "to the judge of the zillah." *Vide* Cl. 3, Sec 5, Reg. I. 1827.

7. It will be necessary also to modify the provisions of sect. 8, Regulation I. of 1827, and of sect. 5, Regulation VII. of 1827, prescribing the mode in which

(B.) No. V.
Madras Judicial System.

the assistant judge, the principal sudder ameen, and the sudder ameen of the auxiliary court are to procure expositions of the Hindoo and Mahomedan law in suits pending before them, and to make provision for the hearing of special appeals from the decisions of the sudder ameen in the native court at Itchapoor, which, by clause 2 of the last quoted enactment, are required to be preferred to the judge of the zillah.

Vide Cl. 2, Sec. 5, Reg. VII. of 1827.

8. In the event of the abolition of the zillah court of Chicacole it will be necessary also to make provision for the hearing of appeals from the decisions of European officers of government which may arise within the jurisdiction of the principal sudder ameen's court at Itchapore. Under Section 8, Regulation VII. of 1827, all such appeals lie to the zillah court only.

9. It will be necessary also to modify the provisions of Sections 9, 10, 11, 12, and 14 of Regulation VII. of 1827.

Vide Sec. 5, Reg. VIII. of 1827; Sect. 2, Act XXIV. of 1837.

10. The principal sudder ameens in their criminal capacity have no jurisdiction over Europeans and Americans, consequently special provision must be made for the trial of such persons concerned in any crime or misdemeanor which may be committed within the jurisdiction of the native court at Itchapoor, if the court of the criminal judge of the zillah be abolished.

11. It is true that these difficulties might be obviated on the abolition of the zillah of Chicacole, by attaching the districts of Ganjam, and Vizagapatam to the zillah of Masulipatam; but the great distance of Rajahmundry (the station of the zillah court of Masulipatam) from both, renders such measure, in the opinion of the court of Sudder Adawlut, highly inexpedient; add to which, the annexation of so large a tract of country to the jurisdiction at present assigned to the zillah court of Masulipatam, might so encumber the file of that court with appeals of the nature specified above as to render the appointment of an assistant judge, under Sect. 2, Regulation VII. of 1809, absolutely necessary for the due investigation and decision of the civil suits depending before the judge.

12. And under these circumstances the court of Sudder Adawlut direct me to solicit the further orders of government on the subject.

I have, &c.

Sudder Adawlut, Register's Office,
5 July 1838.

(signed) *W. Douglas*,
Register.

(A.)

DISTRICTS.	PRESENT ESTABLISHMENT.					PROPOSED ESTABLISHMENT.		
	Judges of Provincial Courts.	Zillah Judges.	Assistant Judges.	Principal Sudder Ameens.	TOTAL in each District.	Civil and Session Judges.	Assistant Judges, or Principal Sudder Ameens.	TOTAL.
Northern Division:								
Ganjam	-	-	-	1	1	1	1	3
Vizagapatam	-	1	-	-	1		1	
Rajahmundry	-	1	-	-	1	1	1	2
Masulipatam	-	-	1	-	1	1	1	2
Guntoor	-	-	1	-	1	1	1	2
Nellore	-	1	-	-	1	1	1	2
Six	3	3	2	1	Total in the Division, 9	5	6	11

DISTRICTS.	PRESENT ESTABLISHMENT.					PROPOSED ESTABLISHMENT.		
	Judges of Provincial Courts.	Zillah Judges.	Assistant Judges.	Principal Sudder Ameens.	TOTAL in each District.	Civil and Session Judges.	Assistant Judges, or Principal Sudder Ameens.	TOTAL.
Centre Divisions:								
Bellary	-	1	-	-	1	1	1	2
Cuddapah	-	1	-	1	2	1	*2	3
Chittor North Arcot	-	1	-	-	1	1	1	2
Chingleput	-	1	-	-	1	1	1	2
Cuddalore South Arcot	- -	- -	- 1	- -	- 1	1 -	— 1	— 2
Five	3	4	1	1	Total in the Division, 9	5	6	11
Northern Division:								
Cambacanna Tanjars	-	1	-	-	1	1	1	2
Trichinopoly	-	-	1	-	1	1	1	2
Mudura	-	1	-	-	1	1	1	2
Timavelly	-	-	1	-	1	1	1	2
Coimbatore	-	-	1	-	1	1	1	2
Selem	-	1	-	-	1	1	1	2
Six	3	3	3	—	Total in the Division, 9	6	6	12
Western Division:								
Malabar	-	1	2	-	3	1	3	4
Canara	-	1	1	2	4	1	†4	5
Two	3	2	3	2	Total in the Division, 10	2	7	9
Nineteen Districts	12	12	9	4	37	18	‡25	43

* Or only one assistant judge (or principal sudder ameen), if the court at Cumbum is not continued.

† Or three, if Sirsee is not continued. This includes one assistant to the civil judge of the zillah.

‡ Twenty-five (or 23 if the courts at Cumbum and Sirsee are abolished). Assistant judges or principal sudder ameens at the discretion of Government.

Legis. Cons. 5 Oct. 1840. No. 39.

On the Modification of the Madras Judicial System.

MINUTE by the Honourable *W. W. Bird*, Esq.; dated 3 October 1840.

IN a Minute dated the 24th of May 1839, I have already expressed my concurrence, for the reasons assigned by the government of Fort St. George, in the proposed modification of the Madras judicial system. That modification has been ordered by the honourable Court to be carried into effect without further delay; and it has only been postponed for the receipt of the Report from the Law Commission which has now been submitted.

That Report should be immediately forwarded to the Madras government, with a view to obtain as soon as practicable the opinion of the Right honourable the Governor in Council and of the Judges of the Sudder and Foujdaree Adawlut in regard to the various and important suggestions which it contains for the early accomplishment of the object so long desired.

Those suggestions appear to me, as far as I can at present judge, well calculated to remove the evils complained of, and to improve in a very great degree the efficiency of the judicial administration under the Madras government. There are a few points on which I entertain some doubt; viz. whether so large a number of civil and sessions judges are indispensably necessary, whether it be advisable to pursue the course recommended in regard to special appeals, whether the districts of Ganjam and Vizagapatam should or not be excluded for the present from the general scheme, and whether assistant judges might not immediately be dispensed with altogether; but on these and a few other points I shall abstain from saying more until we hear from Madras upon the subject.

(signed) *W. W. Bird.*

(No. 308.)

Legis. Cons. 5 Oct. 1840. No. 40.

From *F. J. Halliday*, Esq. Junior Secretary to the Government of India, *to* *H. Chamier*, Esq. Chief Secretary to Government of Fort St. George.

Sir,

Legislative.

WITH reference to your letter No. 489, dated 3d June 1836, I am directed by the Governor-general in Council to transmit to you, for submission to the Right honourable the Governor in Council, the accompanying copy of a Report from the Indian Law Commission, dated 2d August last, upon the proposed changes in the judicial system of the presidency of Fort St. George, and to request that his Lordship in Council will favour the Supreme Government with as little delay as practicable, as well with his own opinion as with that of the Judges of the Sudder and Foujdaree Adawlut in regard to the various and important suggestions contained in that Report, for the early accomplishment of an object so long desired. If the changes suggested by the Law Commission be approved by the authorities at Fort St. George, I am further directed to request the government of India may receive drafts of the enactments requisite to carry them into effect.

I have, &c.

Fort William,
5 October 1840.

(signed) *F. J. Halliday*,
Junior Secretary to Government of India.

— (B.) No. VI. —

On the Question of rendering Lands purchased under Fictitious Names liable to Forfeiture, including Lands of Native Officers, &c.

(B.) No. VI. Respecting Lands held under Fictitious Names.

(No. 30.)

From *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission, to *T. H. Maddock*, Esq. Secretary to the Government of India, Legislative Department, Fort William.

Legis. Cons. 23 Nov. 1840. No. 12.

Sir,

Mr. Secretary Macnaghten's letter, dated 5th March 1835, No. 641, referred to the Indian Law Commission the question of rendering all lands liable to forfeiture which may have been purchased in fictitious names by any parties, native officers of Government and others.

2. This reference arose from a despatch of the Honourable Court of Directors, dated 4th March 1835. In it the Honourable Court proposed that the native judicial officers should be required to report the avowed acquisitions of land by themselves and relations, and that the clandestine acquisition by such officers should be prohibited and the title derived thereby declared vitiated.

3. On receipt of the above reference, the Law Commissioners addressed to the principal judicial and revenue authorities letters, which solicited information and opinions on the following points. The prevalency of the practice, its origin, its advantages, if any, and the most suitable remedy if abolition were decided on.

4. Mr. J. P. Grant, the late officiating secretary, in his letter of 30th June 1837 to Mr. Secretary Macnaghten, in acknowledging the above, intimated that the Law Commissioners saw great inconvenience in the practice, but before suggesting any measure of abolition, had instituted the above inquiry, on consideration of the great variety of landed tenures in India.

5. In my letter of 14th September 1838, to your address, it was intimated that the returns that had been called for were not yet complete; and with reference to the letter from Government, dated 21 May, whereby certain subjects on which special legislation was proposed had been recalled, the Law Commissioners took the opportunity of asking if the Supreme Government still expected any special recommendations from them. By your reply, dated 5th November 1838, the Law Commissioners were instructed, on the completion of their inquiries, to refer the whole of their proceedings on the matter for the information of Government, a Sale Act, in which provisions might be made for such cases, being in course of preparation.

6. In compliance with this instruction, I am directed to transmit to you, for the purpose of being laid before the Governor-general in Council, a copy of the letter addressed by order of the Law Commissioners to the Sudder Courts and Boards at the three Presidencies, and the reports which have been received in answer to the queries therein contained, viz. a report from the Sudder Dewanny Adawlut at Calcutta, with an abstract of reports received from the subordinate judicial officers.

A report from the Sudder Dewanny Adawlut at Allahabad, with reports from the subordinate judicial officers and an abstract.

A report from the Sudder Adawlut at Madras, with reports from the subordinate judicial officers.

Reports from the Sudder Dewanny Adawlut at Bombay and the Boards of Revenue at Calcutta, Allahabad, and Madras, and the revenue commissioner at Bombay.

7. It will be observed that the practice of purchasing lands in fictitious names, or in the names of persons not really interested, is said to be very general in the lower provinces of the Bengal Presidency, but not common any where in the upper provinces, and in some of them almost, if not altogether unknown. Under the Madras Presidency it is stated to be very common in the southern and western divisions, particularly in the latter, comprising the districts of Malabar and Canara, and to prevail more or less in every district in the northern and centre divisions also. In the Bombay Presidency likewise it appears to be very generally prevalent.

(B.) No. VI. Respecting Lands held under Fictitious Names.

8. The practice appears to have obtained in most parts of the country before they fell under the British rule; but it is said to have originated in some parts, and generally, to have become more common subsequently. It is supposed that under former Governments it was induced in a great measure by fear of the rapacity and extortion of the rulers and their officers. The greater prevalence of the practice under the British Government is ascribed generally to the operation of certain provisions in our Regulations, those particularly which imposed restrictions upon the acquisition of lands by Europeans and the native functionaries in the Revenue Department, and those which subjected landholders to certain duties and personal liabilities. To evade the former, both Europeans and native functionaries adopted the expedient of purchasing land in the names of their dependants. Though the restrictions applied only to revenue officers, yet the practice appears to have become common amongst all classes of natives in the public service, mainly to prevent their superiors in office from becoming informed of the extent of their acquisitions, lest suspicions of their integrity should be excited. Capitalists, also, who desired to invest their funds in landed property, but did not like to incur the public responsibilities of landholders, fell into the same practice.

9. The practice has been followed in other cases from various motives, but mostly with a deceitful purpose; for example, with the design of placing the property purchased beyond the reach of creditors or the process of the courts for the execution of decrees; and of the revenue officers, for the realisation of arrears of revenue; or in order to make a settlement of it in favour of a particular party, not in accordance with the law of inheritance. Sometimes, however, parties follow the practice in good faith, actuated not uncommonly by superstitious motives, by which they are induced to make purchases in the name of some member of the family who is deemed fortunate, or in the name of a deceased person who is held in veneration among them, or perhaps in the name of one of their gods.

10. It appears to be thought that the practice is growing less frequent, and now that Europeans are at liberty to acquire lands openly, and it is declared that there is no objection to native judicial functionaries holding lands, provided they register them; and since measures have been taken to render the responsibilities of landholders less troublesome to them, there are fewer inducements for the real purchaser to keep out of sight, while experience has shown that these underhand transactions are far from secure. It is to be expected, therefore, that the practice will fall off still more without the direct interference of the Legislature.

11. I am directed to add, that adverting to the terms of your letter of the 5th November 1838, from which it appears that the result of these inquiries may be wanted for the purposes of the Sale Act now in preparation, the Commissioners have not considered that they were required, or that it was necessary on the present occasion to accompany these reports with any recommendations.

I have, &c.
(signed) *J. C. C. Sutherland,*
Secretary.

Indian Law Commission,
31 October 1840.

From *J. P. Grant,* Esq. Officiating Secretary to the Indian Law Commission.

(Circular.)

Nos. 32, 33, 34, and 35.

To Superintendent of Revenue Bombay, and Secretaries of all Boards of Revenue.

Nos. 28, 29, 30, and 31.

To Registers of all Sudder Courts.

Dated 30 June 1837.

Sir,

I AM directed by the Indian Law Commissioners to request that you will lay the following communication before the Court* for the consideration of the Judges †.

* Board.
† Members.

2. The Indian Law Commissioners have had before them certain correspondence between the Calcutta and Allahabad sudder courts and government on

(B.) No. VI. Respecting Lands held under Fictitious Names.

on the subject of the rules which have been issued by those courts for preventing subordinate judicial officers from acquiring landed property secretly, or holding it under feigned names. This correspondence was laid before the Indian Law Commission by the Government of India in connexion with the more general question of the expediency of rendering all lands liable to forfeiture which have been purchased under fictitious names by any parties, whether native officers of Government or others. The Commission are fully impressed with the inconveniences which result from the common Indian practice of purchasing and holding property in fictitious names, but they feel that it would be unsafe to make a general change in the existing law on so important a point without a fuller knowledge than they now possess of the circumstances under which the practice has sprung up in every part of India. With this object, I am directed to request that you will obtain the opinions of the Judges* on the following points:

1st. Is the practice of holding landed property under fictitious names common in the provinces under the jurisdiction of your Court† ?

2d. If so, when did that practice originate, and what were the circumstances that induced it?

3d. Are there any advantages in the continuance of that practice, and if there be, what are those advantages?

4th. In case of it being determined to prevent the continuance of that practice, what provisions of law would most surely and conveniently, and with least risk of injustice to individuals, effect that object.

* Members.

† Board.

(signed) *J. P. Grant*,
Officiating Secretary.

Indian Law Commission,
30 June 1837.

(True copy.)
(signed) *J. C. C. Sutherland*, Secretary.

(No. 1224.)

Legis. Cons. 23 Nov. 1840. No. 13.

From *J. Hawkins*, Esq. Register of the Sudder Dewanny and Nizamut Adawlut at Fort William, to *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission.

Sir,

Sudder Dewanny Adawlut. Present: R. H. Rattray, W. Braddon, C. Tucker, Esqrs. Judges, and J. F. M. Reid, Esq. Officiating Judge.

With reference to Mr. Officiating Secretary Grant's letter (No. 28), dated the 30th June 1837, on the subject of holding lands under fictitious names, I am directed to state, for the information of the Indian Law Commission, that previously to giving their own opinion on the questions proposed, the Court considered it proper to require the sentiments of the judges of the zillah and city courts within their jurisdiction, who were well able to illustrate the local and practical bearings of the question.

2. An abstract has been carefully prepared in this office of the returns of the local authorities. In that paper (which is herewith forwarded) the causes which are believed to have led to the practice of holding lands under fictitious names are enumerated *seriatim*, and the measures which are considered likely to put a stop to the practice are pointed out.

3. The Court entirely concur in the sentiments expressed by the local authorities, as to the public inconveniences which arise from the practice in question, and the fraudulent objects which are facilitated by it. They are also of opinion that it would be expedient to prohibit the practice in an effectual manner.

4. The practice is so general, and has so long received the sanction of the courts of law, that it would be difficult to provide a remedy for the evil. But the court still think that the difficulty should not deter the Legislature from the attempt.

5. As a preliminary measure, a majority of the Court would recommend the establishment of a general registry of all transfers of immovable property, by rendering it imperative on parties to register all deeds of the nature of those described in Sect. 3, Regulation XXXVI. 1793, and the corresponding enactments for the provinces of Benares and the ceded and conquered provinces,

(B.) No. VI.
Respecting Lands held under Fictitious Names.

with the exception perhaps, of leases for very small portions of land. Should the Government determine on the adoption of the measure, the details may be settled hereafter.

6. Should the general registry be established, parties should be required to register within a prescribed period, in the name of the real proprietors, all deeds not already registered, and in the event of any deeds under fictitious names having been already registered, the parties should be required to register them again in the name of the real proprietors.

7. These provisions with a positive prohibition against the recognition by the courts of justice of any deed or title under fictitious names, after the period prescribed for a general registry, would, it is considered, tend to put a stop to the practice.

8. Mr. Braddon, however, adverting to the prevalence and duration of the practice of holding lands under fictitious names, and the recognition of it by the courts of judicature, is disposed to question the expediency of legislating upon the subject. He is of opinion, that nothing short of subjecting the property to forfeiture, would effectually put a stop to the practice, and he cannot but regard so severe a penalty as very disproportionate to the offence. But in the event of its being determined to pass rules upon the subject, he still thinks they should apply to future transactions, and not to those which have already taken place.

9. Mr. Braddon further observes, that as the Government have already expressed their opinion against rendering the registry of all transfers of land imperative, it seems almost useless to re-urge the consideration of the subject. He, however, has no reason to suppose that the measure would be attended with any great hardship or inconvenience to the parties concerned in the transfer, if the registry was made by the Cazee of the Pergunnah in which the property may be situated.

I am, &c.

Fort William, 17 May 1839. (signed) *J. Hawkins*,
Register.

ABSTRACT of the Returns to the Circular Order of the 21st July 1837, regarding the practice of holding Lands in False Names.

1. (I.) THE first question proposed by the Indian Law Commission to the local judges is, "Is the practice of holding landed property under fictitious names common in the provinces under the jurisdiction of your courts?"

2. The practice is said to be general in the districts of Moorshedabad, Tipperah, Sarun, Sylhet, Rajshahye, Burdwan, Nuddea, Dacca, Midnapoor, Cuttack, Mymensing, Patna, Behar, Rungpoor, Dinagepoor, Bhaugulpoor, and 24 Pergunnahs, but not to prevail to any great extent in Backergunge, Shahabad and Purneah. In Hooghly one-third, and in Beerbhoom two-thirds of the lands are said to be held in fictitious names.

3. (II.) The next question, "When did the practice originate, and what were the circumstances that induced it?" resolves itself into two, first, the origin of the practice, and secondly, the causes which gave rise to it.

Messrs. J. Curtis, R. P. Nisbett, A. Smelt, J. F. G. Cooke, J. H. Patton, A. J. Macdonald, Asst. J. H. D'Oyly, F. W. Russell and C. G. Udny.

4. With reference to the first of these points, the remarks of the Ju ges of East Burdwan, Nuddea, Backergunge, Dacca, Hooghly, Dinagepoor, Beerbhoom, Moorshedabad, and Sarun, are to the effect that the practice is of long standing, and must have existed previous to the year 1793, as it is mentioned in the Regulations, and laws are enacted against it, but that they cannot assign its origin to any particular time.

Messrs. A. Smelt, H. Moore, A. Dick, H. V. Hathorn, W. Cracroft, J. W. Templer, W. Dent, W. A. Pringle, J. H. D'Oyly, H. Stainforth, R. Barlow, and H. S. Oldfield.

5. In the opinion of the Judges of Backergunge, Chittagong, Midnapoor, Cuttack, 24 Pergunnahs, Patna, Shahabad, Purneah, Bheerbhoom Sylhet, Rajshahye, and Tirhoot, the practice may be regarded as the natural effect of the exactions of the native princes, and their subordinate local officers, as well as of the system which required personal service from wealthy zemindars, and entailed other responsibilities on the possession of landed property. And though insecurity of life and property has ceased with the Mahomedan government, the practice is continued for other, and those generally, dishonest purposes.

6. The

6. The Judges of Nuddea and Mymensing, ascribe the practice entirely to the cunning of the natives. Messrs. R. P. Nisbett, & G. C. Cheap.

7. And one officer, the Judge of Jessore, considers it to have originated entirely from "the fiscal regulations of Government, by which landed property was put up for sale in satisfaction of arrears of revenue." Mr. J. F. Cathcart.

8. As regards the second point, the circumstances which induced the practice, the opinions of the local authorities are exceedingly various. The following is an enumeration of the ends for the promotion of which the practice is resorted to.

9. The judges who concur in each of the opinions are mentioned at the end of each statement.

10. (1.) It enables debtors to defraud their creditors.—The Judges of Dacca, Cuttack, Patna, Behar, Rungpoor, Dinagepoor, Bhaugulpoor, Moorshedabad, and Sylhet. Messrs. J. F. G. Cooke, H. V. Hathorn, J. W. Templer, J. C. Brown, J. A. Shaw, A. J. Macdonald, Assist. T. Wyatt, F. W. Russell, and H. Stainforth.

11. (2.) It enables zemindars to evade the demands of Government in cases where estates are sold for arrears of revenue, and a portion of the demand remains unliquidated from the proceeds, for the recovery of which Government could put up to sale other estates of the defaulting zemindars.—The Judges of Midnapoor and Cuttack. Messrs. A. Dick, and H. V. Hathorn.

12. (3.) It enables landholders to evade the payment of revenue to Government by pretended alienations in favour of idols.—The Judge of Sylhet. Mr. H. Stainforth.

13. (4.) It affords a means of evading the law which prohibits a sharer in a joint undivided estate from purchasing the property when brought to sale for arrears of Government revenue.—The Judges of Sarun, Tipperah, and Sylhet. "There is, I think, (observes the Judge of Sarun,) little doubt that it is chiefly ascribed to the system of joint and undivided land tenures, so common in the country, as well as to the nature of the law as connected with the sale of such estates for arrears of Government revenue. No sharer is allowed on these occasions openly to bid or purchase in his own name; whereas it is notorious that joint estates are often sold in consequence of one or more of the partners withholding their proportion of the Government revenue, with the fraudulent intention of purchasing themselves, or that they are bought by some of the co-sharers. As the law, however, does not recognise them as purchasers, they are necessarily compelled to hold the property under a fictitious name. It is true that such sales are declared illegal and liable to be cancelled, but the difficulty of ascertaining the fact effectually nullifies the force of this provision, and at all events the sale cannot be annulled if more than two years have elapsed from the date on which it took place." Messrs. C. G. Udney, D. Pringle, and H. Stainforth.

14. (5.) It affords a means of evading the prohibition against public officers purchasing lands at revenue sales.—The Judges of Midnapoor, Cuttack, Patna, Behar, and Bhaugulpoor. Messrs. A. Dick, H. V. Hathorn, J. W. Templer, J. C. Brown, and T. Wyatt.

15. (6.) It enables native officers of Government to evade the rule which requires them to register all acquisitions of landed property, and thereby to avoid exciting suspicions against them.—The Judges of Cuttack, 24 Pergunnahs, Bhaugulpoor, and Rajeshahye. The last-mentioned authority remarks, "Were the names of our native officers, or those of the dependants of the great zemindars divulged, some inquiry would of course be instituted. If an individual, drawing a salary of a few rupees per month, were recorded as the purchaser of an estate of considerable value, and the question, whence came his funds? might lead to important disclosures as to the probity of the recorded purchaser." Messrs. H. V. Hathorn, W. Cracroft, T. Wyatt, and R. Barlow.

16. (7.) The gomashtahs of ignorant, dissipated, or absent proprietors, purchase lands with their master's funds in their own names, with a view to claim them at a seasonable time.—The Judges of Cuttack, Bhaugulpoor, and Rajeshahye. On this point Mr. Barlow observes, "I have had occasion to observe, that when in joint undivided estates one of the parties was a minor, the proceeds of the entire estate have generally been appropriated to the purchase of lands, (benamee), resulting, on a minor's gaining his majority, in violent breaches of the peace, sometimes in the imprisonment of the proprietors themselves, in expensive lawsuits, and not unfrequently in the utter ruin of the whole family. The same evils are to be met with in cases where the proprietors are females, and their business conducted by mooktears. These thrive so long as suits are going on in our courts; it is their interest to encourage them; Messrs. H. V. Hathorn, T. Wyatt, and R. Barlow.

(B.) No. VI.
Respecting Lands held under Fictitious Names.

them; sums of money are entrusted to them for the conduct of these cases, which are very often laid out in the realisation of landed property, bought under feigned names."

Messrs. H. V. Hathorn, H. Stainforth, and W. Cracroft.

17. (8.) A sharer in a joint family property purchases estates under other names, with a view ultimately to appropriate such estates, acquired out of the common stock, to himself.—The Judges of Cuttack, Sylhet, and 24 Pergunnahs.

Messrs. H. Moore, J. H. Patton, J. W. Templer, H. Stainforth, and H. S. Oldfield.

18. (9.) The practice enables persons to secure property to their sons unaffected by the claims of other members of their family.—The Judges of Chittagong, Hooghly, Patna, Sylhet, and Tirhoot.

Messrs. G. Cheap, J. W. Templer, W. Dent, J. C. Brown, T. Wyatt, J. H. D'Oyly, J. F. G. Cooke, and H. S. Oldfield.

19. (10.) It enables zemindars, and particularly female, to evade the laws which make them responsible for certain police duties, such as given information of the commission* of the offenders.—The Judges of Mymensing, Patna, Shahabad, Behar, Bhaugulpoor, Beerbhoom, Dacca, and Tirhoot.

* *Sic orig.*

20. (11.) Estates are held under other names, with a view to furnish fictitious security for fraudulent purposes. "Landed proprietors, native officers (about to be entrusted with public money), traders, bankers, and the like, all of whom, on various occasions, are called upon to furnish security in their several pursuits and mercantile transactions, continue to avoid eventual responsibility, by always having a portion of their landed property in the name of a servant or dependant, which is ever ready to be pledged whenever security is required of them, and which if at any time declared fortified or obnoxious to sale, is immediately claimed by the benamee holder, who has little difficulty, with the assistance of the actual proprietor, in proving his ostensible right to the property.—The Judge of Cuttack."

Sic orig.

Mr. H. V. Hathorn.

21. (12.) The practice is sometimes resorted to "by landed proprietors with a view to enhance the rents of their tenantry, which they effect by suspending the Government dues, and thereby causing a sale, when they themselves repurchase under fictitious names, and then, as new purchasers, enter into fresh engagements with their tenants."—The Judge of Cuttack.

Mr. H. V. Hathorn.

22. (13.) Fukeers, gossains, and other descriptions of religious mendicants, who profess to live entirely upon charity, frequently possess lands under fictitious names.—The Judge of Cuttack.

Mr. H. V. Hathorn.

23. (14.) Indigo planters were in the habit of holding lands in the names of others, from an impression that they were prohibited from holding or farming lands.—The Judge of Cuttack.

Mr. H. V. Hathorn.

Messrs. J. H. Patton, C. G. Money, and D. Pringle.

24. Lastly, the practice is ascribed to the subdivision of property, and the introduction of the putnee or underletting system, sanctioned by Regulation VIII. 1819.—The Judges of Hooghly, Sarun, and Tipperah.

25. III. The third question proposed is, "Are there any advantages in the continuance of that practice, and if there be, what are these advantages?"

Messrs. J. Curtis, R. P. Nisbet, A. Smelt, J. F. G. Cooke, A. Dick, J. F. Cathcart, H. V. Hathorn, G. C. Cheap, W. Cracroft, J. C. Brown, F. W. Russell, R. Barlow, and H. S. Oldfield.

Messrs. J. F. Cathcart, A. Dick, J. H. Patton, J. Templer, J. A. Shaw, W. A. Pringle, J. H. D'Oyly, J. F. G. Cooke, and C. G. Udney.

26. The Judges of East Burdwan, Nuddea, Backergunge, Dacca, Midnapoor, Jessore, Cuttack, Mymensing, 24 Pergunnahs, Behar, Moorshedabad, Rajshahye, and Tirhoot, report, that advantages there are none; on the contrary, add the Judges of Jessore, Midnapoor, Hooghly, Patna, Rungpoor, Purneah, Beerbhoom, Dacca, and Sarun, the practice gives rise to deceit and chicanery, and tends to increase the intricacy of suits connected with landed property.

Messrs. H. Stainforth, and H. Moore.

27. The Judges of Sylhet and Chittagong, appear to regard the practice in a more favourable light. In the opinion of the former, it affords a facility for "honestly securing land for the benefit of others by purchasing it in their names, and avoiding what appears an injustice in the Hindoo law." The latter deprecates all interference with the existing rule. His views are here given at length.

28. "That the system is radically bad is acknowledged; yet opinion appears to deprecate interference with the ustom, further than what the law at this time dissents to. When the practice is induced by harmless intention, prohibition would

Sic orig.

(B.) No. VI. Respecting Lands held under Fictitious Names.

would be considered harsh, and even when aimed against fraud, although the intention of Government is to add further security to property, or to act for the general benefit, yet in endeavouring to effect this object by denouncing the acquisition of property in fictitious names, and by annexing penalties in cases of infringement of the law, a shackle or two would be put on the ready transfer of land. It cannot be argued that there are advantages in the practice other than freedom of commerce; it may, however, be said, that the transaction is in its nature one not extremely difficult of deduction, for the real owner is generally in possession of the land, and I am not aware that it is an evil that has amounted to that height that legislative measures are called for. Great fear may be entertained that in seeking to put an end to one malpractice, we open a door to another; greater taint being given to the title, more concealment and covering than at present obtains must be had recourse to.

29. "It is an object to guard against fraudulent schemes, yet of moment not to intermeddle with the workings of society. Our courts respect the acquisitions made in fictitious names, that are not barred by law; not, however, to the injury and detriment of third persons, or the just claims of creditors: constituted with equitable jurisdiction, we adjudge as if a statute directed against devices had place in our code.

30. "There is a drawback also which corrects the practice; the wholesome apprehension that the tables may be turned on the practisers themselves. I have known claims asserted by individuals in whose names the deeds of conveyance were made out.

31. "It appears to me that the greatest difficulty would be experienced in putting an end to the system. It is characteristic of the people of India to be imbued with a dread of what may befall hereafter; habit and feeling would induce them to act in defiance of the law, and they would have all the sympathies of society with them; even Government has abrogated forfeiture in cases of public sales, except in the proper instance of certain public officers being purchasers; and however much the practice is to be deprecated, yet I am convinced a legal enactment interdicting it, would be evaded, and a law of forfeiture or penalty could scarcely be executed without risk of injustice to individuals."

32. The Judge of Tirhoot is of opinion that the servants of Government, whether native or European, should not be prohibited from becoming purchasers of landed property. He observes, "I see no advantages in laws forbidding the officers of Government, European or native, from becoming purchasers of landed property generally. If Government steadily, without fear or favour, invariably visited the transgressions of corrupt men with punishment, there would be no necessity for these prohibitory laws which fail against dishonesty, and which are but records of the opinion of Government that all its servants are prone to slip, dishonesty being the rule, and honesty the exception. The laws against trading are not so objectionable, because this is more speculative; but holding land is like holding stock, a mode of funding with the view of obtaining a secure income to retire upon, or for the support of a family, and I should have thought that Government would have been better pleased to number among its servants men of landed property than mere adventurers. So long as the name of a real person is recorded, of what consequence is it to Government whose money paid for the property, and to ascertain this reality, the collectors may summon the parties to attend, or if in other districts, might have the necessary inquiries made through the collectors of those districts under the provisions of Section 25, Regulation XLVIII. of 1793, and Section 21, Regulation VIII. of 1800." Mr. H. S. Oldfield.

33. It may be observed, that the Judge of Tirhoot has overlooked the reasons for which Government are averse to their native employers holding lands. *See* the Circular Order, No. 76, dated the 24th September 1824.

34. (4.) The fourth and last question of the Indian Law Commission is, what provisions of law would most surely and conveniently, and with least risk of injustice to individuals, effect?

35. 1. The following remedial measures are proposed by the different authorities.

Messrs. R. P. Nisbet, A. Smelt, J. F. G. Cooke, J. H. Patton, H. V. Hathorn, W. Cracroft, J. C. Brown, J. A. Shaw, A. J. Macdonald, Assist. T. Wyatt, J. H. D'Oyly, T. W. Russell, D. Pringle, C. G. Udny, R. Barlow, H. S. Oldfield, and W. A. Pringle.

36. (1.) The registry within a given time, say six or 12 months, of all benamee tenures now existing. The Judges of Nuddea Backergunge, Dacca, Hooghly, Cuttack, 24 Pergunnahs, Behar Rungpoor, Dinagepoor, Bhaugulpoor, Beerbhoom, Moorshedabad, Tipperah, Sarun, Rajshahye, Tirhoot, and Purneah. The Judge of the last-mentioned place would restrict the registry to lands held by the officers of Government.

Mr. J. H. Patton.

37. (2.) The registry of estates held in common tenancy in which a division of the property has taken place.—The Judge of Hooghly.

Mr. J. H. Patton.

38. (3.) The registry within one month of all changes of ownership.—The Judge of Hooghly.

Mr. J. H. Patton.

39. The advantages to be expected from these measures are thus adverted to: "The collector's office (observes the Judge of Hooghly) should form the depository of the valuable records, so that that authority would be in possession of a true and faithful register of all estates and properties connected with the soil, and on reference be able to furnish every possible information regarding the landed interests of litigants, and further in a marvellous degree, the satisfactory and speedy adjustment of claims to real property in courts of judicature at

Mr. J. W. D'Oyly.

present so perplexing and retarded. And the Judge of Beerbhoom: "Thus the register of the collector would become a most valuable document, whereas now it is of little or no use, it would render the execution of decrees straightforward and comparatively easy, and would, I think, put a stop to all the rascality now carried on to evade that process; but to render this register efficient, a separate and responsible establishment would probably be necessary, which, however, would be well worth the expense, if it put a stop to a system, which with all its other disadvantages, has been for years the chief cause of delay in the execution of the decrees of civil courts."

40. 2. The penalties proposed for disobedience of the laws, are the following:—

Mr. J. F. G. Cooke.

41. (1.) Forfeiture of three or four years' proceeds of lands held in a false name.—The Judge of Dacca.

Messrs. A. Dick, J. H. Patton, W. Dent, J. C. Brown, T. Wyatt, and R. Barlow. Mr. J. A. Shaw. Mr. W. Dent.

42. (2.) Forfeiture of the lands.—The Judges of Midnapoor, Hooghly, Shahabad, Behar, Bhaugulpoor, and Rajeshahye. The Judge of Rungpoor recommends the confiscation of only a portion of the lands, and the Judge of Shahabad suggests, that a high premium or per centage be paid to the informer.

Messrs. J. T. Cathcart, H. V. Hathorn, G. C. Cheap, W. Cracroft, J. W. Templer, J. H. D'Oyly, J. W. Russell, C. G. Udny, H. Stainforth, and H. S. Oldfield.

Mr. W. Cracroft.

43. (3.) Taking away the right to prosecute claims to land held under a false name, and declaring the person in whose name it is held, the rightful owner of such land.—The Judges of Jessore, Cuttack, Mymensing, 24 Pergunnahs, Patna, Beerbhoom, Moorshedabad, Sarun, Sylhet, and Tirhoot. The Judge of the 24 Pergunnahs suggests, for obvious reasons, that this penalty be not inflicted on those whom the Regulation terms disqualified proprietors.

Messrs. J. F. G. Cooke, J. C. Brown, and T. Wyatt.

44. (4.) The process by which the penalties proposed are to be adjudged, to consist of a summary inquiry.—The Judges of Dacca, Behar, and Bhaugulpoor.

(signed) *J. Hawkins*, Register.

(No. 782.)

Legis. Cons. 23 Nov. 1840. No. 14.

From *H. B. Harington*, Esq. Register of the Sudder Dewanny Adawlut, North Western Provinces, Allahabad, to *J. P. Grant*, Esq. Officiating Secretary to the Indian Law Commission, Calcutta.

S. D. A. N. W. P. Present, M. H. Turnbull, J. A. Colvin, W. Lambert, and W. F. Dick, Esqrs. Judges.

Sir,

I AM directed by the Court to acknowledge the receipt of your letter, No. 29, under date the 30th ult., relative to the practice which obtains in this country, of persons holding landed property in fictitious names, and in reply, to transmit, for the information of the Indian Law Commissioners, the accompanying copy of a circular this day addressed to the several judicial authorities in these provinces,

(B.) No. VI.
Respecting Lands held under Fictitious Names.

vinces, requesting them to furnish the Court at their earliest convenience, with an expression of their opinion on the questions proposed in your letter; on the receipt of those officers' replies, they will be forwarded to your address without loss of time.

Allahabad,
21 July 1837.

I have, &c.
(signed) *H. B. Harington,*
Register.

S. D. A. N. W. P.
Present,
M. H. Turnbull,
A. J. Colvin,
W. Lambert, and
W. F. Dick, Esqrs.
Judges.

(No. 783.—Circular.)

From *H. B. Harington,* Esq. Register of the Sudder Dewanny Adawlut, North Western Provinces, Allahabad, to the Commissioners of Circuit, Session Judges, and Magistrates, North Western Provinces.

Sir,

I AM directed to transmit for your perusal, the accompanying copy of a letter from the Secretary to the Indian Law Commissioners, No. 29, under date the 30th ult., relative to the practice, which obtains in this country, of persons holding landed property under fictitious names, and to request that you will furnish the Court at your earliest convenience with a report of your opinion on the several questions therein proposed.

Allahabad,
21 July 1837.

I have, &c.
(signed) *H. B. Harington,*
Register.

S. D. A. N. W. P.
Present,
M. H. Turnbull,
A. J. Colvin, and
W. Lambert, Esqrs.
Judges.

(No. 1458.)

From *H. B. Harington,* Esq. Register of the Sudder Dewanny Adawlut, North Western Provinces, Allahabad, to *J. P. Grant,* Esq. Officiating Secretary to the Indian Law Commission, Fort William, dated 8th December 1837.

Sir,

THE Indian Law Commissioners have already been informed by my letter to your address under date the 21st July last of the Court having judged it proper to call upon the judicial authorities subject to their control, for an expression of their sentiments on the several points contained in your letter of the 30th of the preceding month, relative to the practice which obtains in this country of persons acquiring and holding lands under fictitious names; the replies received to the Court's circular, of which you have already been furnished with a copy, are herewith forwarded in original, as per annexed list, together with an abstract of them, which has been prepared in this office, and I am directed to request that you will submit the same for the consideration of the Law Commissioners.

2. With regard to the first question proposed in your letter, it will be observed, from the accompanying returns, that in a large proportion of the districts in these provinces, the practice of holding landed property in fictitious names is almost wholly, if not altogether, unknown, and that in others, where it at one time prevailed to a considerable extent, it is stated to be fast falling into disuse.

3. As respects the origin of the practice, and the circumstances which gave rise to it, the reports of the local authorities furnish but little information. It is stated to have obtained, in some parts of the country, under the native governments, and to have been resorted to chiefly with a view to escape the rapacity and extortions to which persons known or supposed to be possessed of property, whether in lands or money, were constantly exposed, not only on the part of the ruling powers, but of every petty officer of Government concerned in any way in the administration of revenue or police

4. Though the practice, however, existed previously to the accession to the Dewanny of the East India Company, it appears not to have attained any great height until after that period, when the prohibitory laws introduced against Europeans as well as the native officers of Government employed in the Revenue Department, purchasing directly or indirectly any lands disposed of by the collector at public sale, or as regards the latter, against being concerned,

(B.) No. VI.
Respecting Lands held under Fictitious Names.

on their private account, in the collection or payment of the revenue of any lands in the zillah, either as farmers, sureties, or otherwise; and the responsibilities imposed upon landholders generally, for the preservation of the peace within their estates, and the punctual payment of the public revenue, which extended to their persons, as well as to any other property in their possession, naturally encouraged recourse to a measure which enabled those who were interdicted altogether from holding lands to evade the law; and afforded to others who were desirous of investing their capital in such property, without incurring the responsibilities and duties legally attaching thereto, the ready means of gratifying their wishes with impunity and comparative security.

5. The extent to which the native officers of Government in the Revenue Department became possessed of estates in these provinces within the first few years of the British rule, by taking advantage of the means which recourse to the practice under consideration offered of concealing such acquisitions from their official superiors, will, as noticed by the Judge of Ghazeepore, be found fully detailed in the preamble to Regulation I. of 1821; and to the practical operation of that and the subsequent Regulations on the same subject, added to the difficulty not unfrequently experienced by the real owners of property acquired in a fictitious name, of establishing their title to it, when the same may have been disputed by the persons in whose names it was held, or by any other claimants, may in a great measure be attributed the discontinuance of the practice, which, as previously noticed, is rapidly on the decline. The recent enactment, also, authorising Europeans to acquire and hold property in land, or in any emoluments arising out of land, either in perpetuity or for any term of years, by removing the cause which led individuals of that class to have recourse to the measure in question, will of course tend still further to put a stop to it.

6. It appears to be generally admitted that the practice is attended with no public advantage, except that it induces parties possessed of capital to embark that capital in landed property, by taking it in a fictitious name, which they would not do were they liable to the personal process to which the ostensible owners of such property are amenable.

7. The objections which persons of this description make to holding lands in their own names are, that it not only renders them answerable in their persons and in any other property of which they may be possessed for the payment of the public demands, but that it also exposes them to the petty annoyances and degradation which the native officers of police have it in their power to inflict on zemindars who incur their enmity, as well as to the extortions of those officers, who, under the pretext that crimes have occurred, or that offenders are concealed within the precincts of their estates, threaten, unless they satisfy their demands, to report them to the magistrate, which they are well assured will lead to their being summoned to the sudder station, in some instances at a great distance from their homes, to answer for their alleged misconduct, and is not unlikely to terminate in their being severely fined, and perhaps imprisoned.

8. With regard to the latter objection, the Court observe, that the obvious remedy is to render the responsibility of the landed proprietors, as respects the preservation of the peace on their estates, as little burthensome and vexatious as possible, consistently with the attainment of that object, and in all cases to allow every respectable landholder, whether zumeendar or farmer, the option of appointing an agent to answer whatever calls may be made upon him by the Mofussil police or the magistrate, and to attend at the cutcherries of those officers whenever his presence may be required in regard to any matter connected with his estate, provided, of course, that such appointment be not considered as exonerating the zumeendar from responsibility, (not extending, however, to his person,) on account of any penalty awarded against his representative, or to exempt him from punishment under the general Regulations, in the event of its appearing that he had neglected to make proper provision for, or had failed in, the discharge of the duties required of him by law.

9. With respect to the second objection, and the same remark indeed applies equally to both, it may be sufficient to observe, that any measure which enables the real proprietor of an estate to evade the duties or responsibility which the law has prescribed as the conditions of his holding such property, must, on general principles, be objectionable, and should be disallowed.

10. But

10. But whatever may be the advantages of the practice, the Court are of opinion that they are more than counterbalanced by the chicanery and fraud to which it gives rise, in the opportunity that it holds out to the dishonest landholder of defrauding his creditors by removing his property by a fictitious sale from the grasp of the law, while it at the same time enables him to escape the personal process to which he would be liable on account of the Government demands on the estate.

11. The practice has also been found to promote litigation, particularly between the heirs of the real owner of the property and the fictitious holder, where the latter, from bad faith, either declares the proprietary right to be vested in himself, or denies the title of the opposite party, which, owing to the clandestine manner in which such transactions are necessarily conducted, he knows it will be almost impossible to establish; while the absence of all documentary or other credible evidence of the real nature of the transaction between the parties not unfrequently involves the case in such doubt and obscurity as to render it a matter of very great labour and extreme difficulty, amounting in some instances almost to an impossibility, to decide it satisfactorily.

12. Under the circumstances, the Court are disposed to concur in the opinion expressed by the majority of the officers whom they have consulted on this occasion, that the practice should be prohibited by law.

13. With regard to the most effectual mode of putting a stop to it with the least risk of injustice to individuals, the Court are of opinion that it will be sufficient to declare, by a legislative enactment, that all property ascertained to be held after a certain date in a fictitious name, as well as any property which may hereafter be acquired in that mode, will be liable, on the same being brought to the notice of Government by the revenue authorities, to confiscation, or to such other penalty as the Government, on a full consideration of the circumstances of the case, may think proper to impose.

14. The foregoing remarks are not intended to apply to lands *bonâ fide* purchased in the name of a son or other relative, or indeed of any other person, and intended for his or their benefit during the lifetime of the purchaser, or after his death; where such purchases may not be open to any suspicion of fraud, and the name of the parties on whose account they were made may be duly declared and registered at the time of sale, the Court are not aware of any objections to them. The same remark is of course equally applicable to *bonâ fide* transfer of property during the owner's lifetime.

I have, &c.

(signed) *H. B. Harington,*
Register.

Allahabad, 8 December 1837.

RETURNS to C. O. No. 783 of the 21st July 1837.

Delhi Division.

No.
1. Commissioner of Delhi.
2. Judge of Delhi.
3. Magistrate of Paneeput.
4. Ditto - of Hissar,
5. Ditto - of Delhi.
6. Joint ditto of Rhatuck.
7. Officiating ditto of Goorgaon.

Meerut Division.

8. Commissioner of Meerut.
9. Judge of Shaharunpore.
10. Ditto of Meerut.
11. Ditto of Allighur.
12. Superintendent, Dehra Dhoon.
13. Magistrate, Seharunpore.
14. Ditto - Moozuffernuggur.
15. Ditto - Meerut.
16. Officiating ditto, Bolundshahur.
17. Ditto - - - Allighur.

Rohilcund Division.

No.
18. Commissioner of Rohilcund.
19. Officiating Judge of Moradabad.
20. Magistrate, Bijnaur.
21. Ditto - Moradabad.
22. Ditto - Suheswan.
23. Joint ditto, Kasheepore.
24. Ditto - Bareilly.
25. Ditto - Shajehanpore.

Agra Division.

26. Officiating Commissioner of Agra.
27. Judge of Agra.
28. Ditto - Furruckabad.
29. Ditto - Mynpooree.
30. Ditto - Etawah.
31. Magistrate, Muttra.
32. Ditto - Mynpooree.
33. Ditto - Etawah.
34. Ditto - Agra.

(B.) No. VI.
Respecting Lands held under Fictitious Names.

Allahabad Division.

No.
35. Officiating Commissioner, Allahabad.
36. Judge, Cawnpore.
37. Ditto, Futtehpore.
38. Ditto, Bundlekund.
39. Ditto, Allahabad.
40. Officiating Magistrate, Cawnpore.
41. Magistrate, Futtehpore.
42. Ditto - Humeerpore.
43. Officiating ditto, Banda.
44. Joint ditto, Allahabad.

Benares Division.

45. & 46. Commissioner of Benares.
47. Judge, Goruckpore.
48. Ditto, Azimgurh.

No.
49. Judge, Jaunpore.
50. Ditto, Mirzapore.
51. Ditto, Benares.
52. Ditto, Ghazeepore.
53. Magistrate, Goruckpore.
54. Officiating ditto, Azimgurh.
55. Ditto - - - Jaunpore.
56. Ditto - - - Mirzapore
57. Ditto - - - Benares.
58. Ditto - - - Ghazeepore.

Saugor Division.

59. Commissioner of Saugor.
60. Principal Assistant, Saugor.
61. Ditto - - - - Jubbulpore.
62. 1st Junior Assistant, Seonee.
63. Ditto - - - - Dunmow.
64. Ditto - - - - Baitook.

(signed) *H. B. Harington.*

ABSTRACT of the Returns to the Circular Order regarding the Practice of holding Lands in Fictitious Names.

Delhi Division, Commissioner T. T. Metcalfe.

FROM personal knowledge, cannot state that the practice does or ever has existed; but sees no objection to a law to prevent its occurrence, which would be very salutary in putting a stop to a pernicious practice, and in bringing to light any instances in which it might have existed heretofore.

Is of opinion, that the most sure, the most convenient, and at the same time the most just provision of law, to prevent the practice, would be an Act of Government, rendering all landed property proved in a court of law to have been acquired and held under a fictitious name, after a date to be prescribed, liable to forfeiture, and rendering all landed property now held in a feigned name, upon similar proof, also liable to forfeiture, if not duly registered within one year after the promulgation of the Act, in a book to be kept for the purpose in the office of every judge or collector of land revenue.

Judge, Mr. C. Lindsay.

The practice of holding landed property under fictitious names is almost wholly unknown in the Delhi territory; considers therefore, that any further observations on the subject from him are unnecessary.

Magistrate and Collector of Paneeput, Mr. A. Fraser. Joint do. Rohtuck, Mr. C. Gubbins.

Have no reason to believe that in any one instance is land held under fictitious names in their districts; no further observations are therefore necessary.

Hissar, Magistrate, Mr. S. Brown.

The practice has never obtained in his district, and he believes not in any other of the divisions of the Delhi territory generally, though common in the Dooab and Rohilcund. The practice originated with the introduction of our rule into these provinces, and of late years it has been greatly extended. It arose, and is still principally to be found, in instances where public or private debtors, wishing to avoid the demands against them to which their estates might be liable, either effected a fictitious transfer of such as they had at the time, or, if a new acquisition, bought and took in mortgage in the name of their dependants or of men of paper; it is also adopted to escape the calls of the police. It would be difficult under this view to point out any advantage in its continuance, but its prevention appears to be beyond the grasp of the law.

Delhi, Magistrate and Collector, Mr. P. C. French.

Has no personal knowledge of the practice alluded to, but it is currently reported to be very common in the city of Delhi; and property to a large amount is said to be held under feigned names.

2. The date of the origin, allowing the practice to prevail, cannot be easily fixed; but of the motives which induced it, the principal, it is probable, were to conceal, under former tyrannical rulers, wealth from the rapacity of power; to defraud creditors of their dues, defeat the ends of justice and law, by secreting the means which might satisfy them, and more usually to lull suspicion of iniquitous

(B.) No. VI.
Respecting Lands held under Fictitious Names.

iniquitous accumulations, with the view longer to pursue dishonesty and corruption, under the apparent garb of poverty and distress.

3. No possible advantage can be imagined from its continuance.

4. Thinks the most certain and least inconvenient provision of law for putting a stop to the custom would be an Act of the Legislature, making all property proven in a court of judicature to have been obtained and held under a fictitious name after a prescribed date liable to forfeiture.

Goorgaon, Officiating Magistrate and Collector, Mr. Lawrence.

It is not the practice to hold lands under fictitious names in this district; never recollects to have heard of a case of the kind in the Delhi territory. Is not aware of any fair advantages which can arise from the practice; it can only be done to evade, if necessary, either the demands of creditors or the laws of the land. Forfeiture would most surely put a stop to the practice; and though such a rule might in particular cases press hardly on an individual, this might be remedied by Government remitting the penalty, should it be considered expedient in any case; any punishment short of forfeiture would, he is inclined to think, be sufficient.

Meerut Division, Commissioner, Mr. H. S. Boulderson.

The practice of holding landed property under fictitious names, cannot be said to be common in the districts of this division; instances might doubtless be found, but the practice has very greatly abated, which is attributable to the publicity with respect to transfer of property given by the collectors' registers and the prevention by the collectors of the possession of unregistered persons whenever any contest arises.

2. Cannot state the origin of the practice; presumes that lands bought by fathers in the name of their children, and such like palpable transactions, the intention of which is evidently to save litigation after the real buyer's death, are included under the odium of fictitious name holdings.

3. There are no advantages in the continuance of the practice, which can be necessary only for the purposes of fraud, committed or intended.

4. Does not think that any provisions of law could be more effectual for the prevention of the practice than those already existing; in addition to those, if it enacted that a real proprietor when he had sued an Isurfurzee in the civil court, and his right being shown, should have to pay all the costs of suit, and that a judicial officer, or any class of persons whom it might be deemed right to prohibit from the acquisition of landed property, could not recover at all, every desirable check would be put upon the practice.

Seharunpore, Judge, Mr. G. Bacon.

The practice of holding landed property under fictitious names, as far as he can learn, does not appear to be common in his district.

Knows not what advantages are derivable by the continuance of the practice to any body but those who are immediately concerned; believes such persons purchase and hold lands under fictitious names in order to secure their estates from attachment and sale, in the event of any decree of court or other legal demand being made against them.

Immediate forfeiture of the property to Government, in the event of discovery upon full legal proof, might possibly prevent the extension of the practice in those districts where it may be prevalent.

Dehra Doon, Col. Young, Superintendent.

After particular inquiry, holding lands under fictitious names, is not common in the districts under their jurisdiction, nor have they ascertained an instance of its existence.

Seharunpore, Magistrate and Collector, Mr. Conally.
Mozuffernuggur, Mr. Crawford, Magistrate.
Meerut, Judge, Mr. R. C. Glyn.

The practice was first introduced under the British Government by Europeans and native public officers, the former precluded from holding lands in their own names, and the latter when not so precluded considering it inexpedient to appear as landed proprietors in the districts in which they hold official situations; Europeans will have no further occasion for employing feigned names, and since the disclosures and restitutions made by the special commission, secret purchasing by native public officers has fallen into disuse, and is very rarely had recourse to by individuals of other classes, as Isurfurzee conveyances of lands, houses, and other real interests, have never been recognised in the civil court of this district; such property being always considered to belong to the persons in whose names it appears registered; with reference to this district, sees no necessity for interference by legislative enactment.

Meerut, Magistrate and Collector, Mr. France.

The practice is by no means general in his part of the country; the only circumstance he is aware of to induce a person to have recourse to it, would be to evade any penalty to which he would be liable for holding it himself.

Should conceive that no measure would be more effectual to suppress the practice than to declare all lands which may in future be recorded under a fictitious name, should be rendered liable to forfeiture.

Boolundshakur, Officiating Magistrate, Mr. G. H. Alexander.

The practice does not prevail.

Alligurh, Mr. J. Neave.

The practice of holding lands under fictitious names, though not common, does exist in his district, and has originated since we have had the country; fears that its objects in the majority of cases is to conceal purchases made by servants of the Government, and where this is not the case, it has been had resort to for the provision of some relative whose name is used to prevent dispute hereafter. To check the former, the annulment of the sale so effected, and fine to the extent of the purchase-money, would perhaps tend to remedy the evil; the sellers generally being the parties cajoled, does not think any interference with them necessary.

Alligurh, Magistrate and Collector, Mr. T. P. Woodcock.

The practice obtains to a very trifling extent in his district; it had its origin among the omlah of the courts, who desired to conceal the circumstance of their possessing landed property. Is not aware of any advantages which its continuance can afford to either Government or the people.

Immediate attachment of landed property so held, would be the securest method of abolishing the practice.

Rohilcund Division, Commissioner, Mr. T. J. Turner.

The practice of holding landed property under the names of other persons than the real owners was of frequent occurrence many years back, but is now almost unknown.

It was resorted to for several reasons; 1st, to conceal the acquisition of landed property by persons who, from their official situations, were prohibited from making fresh purchases; 2dly, with a view of eluding the vexatious interference and oppression of the Government native officers, revenue and police; and 3dly, to save the property from sale, in satisfaction of private debts. As no advantage is now to be gained by adhering to it, the practice has been discontinued; does not consider any new legislative Act requisite.

Moradabad, Officiating Judge, Mr. Okeden. Officiating Magistrate and Collector, Mr. Blunt.

The practice does not prevail in this district; are not aware of any advantage in allowing such a practice, which should be declared illegal. If an Act were passed prohibiting the practice, and declaring all lands so obtained after due proclamation of the law, liable to forfeiture, the custom would cease, and no individual suffer injustice.

Bijnore, Officiating Magistrate, Mr. Sympson.

The practice of holding lands is one of common occurrence in this zillah; cannot speak positively as to the origin of it; conceives, however, that the following circumstances have led to the continuance, if not to the introduction of it; the prohibition against Europeans holding lands; also against the officers of Government purchasing lands at public sales; a want of confidence on the part of the natives of India in the British Government when they first became subject to it; and the duties connected with the police attaching to the holders of land. The cases of persons prohibited by the Regulations from holding lands, and who do so under fictitious names, are obviously an evasion of the law.

Is of opinion that no advantages are likely to be obtained by a continuance of the present practice, beyond those which would appear to resultto the parties concerned.

Instructions issued to the several collectors, calling their attention to this practice, and strictly forbidding them to admit on their records the names of any individuals who may be ascertained not to be the real proprietors, might possibly tend to check such practice in future; and an enactment, declaring that whenever a person holding lands under a fictitious name may sue the real proprietor, no evidence of the nature of the transfer will be admitted.

Kasheepore, Joint Magistrate, Mr. C. Fagan.

No instance has come under his notice of property having been held under fictitious names, nor is he aware of the existence of any advantages for the continuance of a practice so irregular, and apparently calculated for none but fraudulent

(B.) No. VI.
Respecting Lands held under Fictitious Names.

fraudulent purposes. The penalty of the forfeiture of the land held under a fictitious name appears to be the most efficient method of eradicating the practice.

Suheswan, Officiating Magistrate, Mr. J. A. Crai[illegible].

The practice is unknown in his district. Is of opinion that the custom is replete with disadvantage, and devoid of a single counterbalancing benefit; holding out encouragement for chicane, and facilitating the evasion of repeated enactments, more especially as relates to land held by native officers of Government.

To prevent the continuance of such practice, the most effective check would be the passing an Act, that all lands so held shall in future be forfeited to Government. Would suggest that mortgage seems also to afford a field for fraudulent practices, and a similar enactment regarding all such engagements might be passed.

Bareilly, Judge, Mr. W. Cowell.

No return.

Bareilly, Magistrate, Mr. W. H. Benson.

Believes that the practice does not obtain in the district of Bareilly; that there are instances of land being held by persons in the name of their children or dependants; several circumstances appear to have led to the practice; the chief appears to be the desire to escape personal restraint and responsibility for Government balances. The practice can hardly be said to have originated under our rule; the earliest Regulations make provision against leasing in fictitious names on account of the injury likely to be sustained by the public revenue by it. The advantages are but slight to a punctual payer of the Government revenue; on the other hand, the disadvantages initiating against the punctual realisation of the public revenue, where the practice may prevail to any great extent, are obvious; and where the principals may be officers holding a public situation, and the fact of ownership may be concealed, the course of public justice may be obstructed from quarters which might be difficult to ascertain, in order to remedy the mischief. In such cases the forfeiture of the estate would appear only a just punishment; but so severe a punishment does not appear called for in other cases, and a fine would seem most proper.

Orig.

Pillibheet, Joint Magistracy.

No return.

Shajehanpore, Officiating Magistrate, Mr. F. P. Buller.

Is not aware that the practice alluded to is common in his district, supposing by the term fictitious names, to be meant persons who have no existence at all.

Agra Division, Commissioner, Mr. Hamilton.

The practice does not now obtain, so far as inquiries enable him to form an opinion.

It originated, in some degree, from the rules to repress the holding of lands by native officers, and also from the desire of acquiring undue influence through connexion with an office which could not be obtained, were parties holding office known to be proprietors of estates within the circle of their duties.

Can discern no advantage in a continuance of such fictitious holding.

Would propose that the penalty of dismissal be incurred, should it be proved that any officer had withheld the communication of his being possessed of land; the prohibition against a Government officer holding land being withdrawn.

Agra, Judge, Mr. Boldero.

The practice is not common in this district; the origin of the custom cannot be clearly ascertained; it existed under the native governments, but has become more prevalent since the British rule, which is attributable to the following circumstances. Under the native government, the pen and sword offered the readiest channels to fortune and distinction; lands were held in less estimation than they now are; the landowners were more liable to injustice and oppression from the native aumils; and consequently few of the higher classes invested their money in the purchase of estates. Since the introduction of the British rule, the purchase of villages has become a safe and advantageous mode of investing money, which has naturally led to the native officers of Government (who are not allowed to hold villages in their own names), purchasing them in the names of their relations or servants. Many merchants, and other respectable men, adopt this plan to prevent their being personally subjected to the disgrace and annoyances which the native officers have it in

(B.) No. VI.
Respecting Lands held under Fictitious Names.

their power sometimes to inflict on zemindars who may incur their enmity; this, and the liability to be summoned to the thannahs', tuhseeldars', magistrates', or collectors' courts, are the chief causes of respectable men holding lands under fictitious names. Considers that the only advantages are to the actual proprietors, who, while they reap the profits of their estates, are exempted from the many petty annoyances they might otherwise be subjected to. So far as Government is concerned, there is neither profit nor loss; the nominal landholder performing all the duties of a real proprietor, and the land being always liable to be sold for the realisation of any defalcation in the revenue.

To put a stop to relations or dependants of the native officers of Government holding lands under fictitious names, the surest method would be to rescind all restrictions to their holding them in their own names, giving them the same facility of acquiring landed property which other individuals possess.

The practice of merchants, and other wealthy and respectable individuals, holding lands under fictitious names, can only be suppressed by taking away the causes which render them unwilling to hold them in their own names. No provision of law can put a stop to the custom, so long as it is for the interest of this class of the community to continue it.

Agra Officiating Magistrate, Mr. G. F. Harvey.

Inclines to the belief that the practice in question had its origin long previous to our acquisition of these provinces. It appears to prevail in a less degree in this district than in Rohilcund. Those whom he has questioned generally agree in stating, that immediately on our assuming the country, an increase to a great extent took place in the number of such titles, most probably from the uncertainty which possessed men's minds as to the nature of the rule to which they were in future to be subjected; but as the character of the British Government became known, it again fell into disuse.

The advantage from this practice in former days is obvious; at present is induced to think it is confined to the native ministerial officers of the country, who are prohibited from purchasing estates sold for arrears of revenue, and who thus become possessed of what they would legally be unable to attain. The practice is, without doubt, considerably encouraged by the dread in which respectable zemindars are of a summons to the magistrate's court, to answer for and explain the cause of any disturbance which may occur in their immediate neighbourhood.

The practice is admitted on all hands to be fast falling into disrepute; and believes no objection would be offered by those most concerned to an immediate enactment for its abolition, giving of course time for the change to be gradually effected.

Mattra, Magistrate and Collector, Mr. W. H. Tyler.

The practice was very general formerly, but is not so now; indeed, it may be said to be almost extinct in this district. Is not aware of any advantages to be derived from its continuance.

Its prevention might be effected by a simple enactment, making the practice illegal, and rendering the parties subject to a fine.

Furruckabad, Judge, Mr. H. Swetenham.

The practice is common. It obtained previously to the introduction of the British Government. It has prevailed probably to a greater extent since; the causes are perhaps the following: the prohibition against Europeans to hold lands, except under certain restrictions, under the provisions of Regulation XIX. of 1803; illegal acquisitions of landed property by ministerial government officers, to remedy which Regulation I. of 1821, and I. of 1823, were enacted; the heavy responsibility which attaches to landholders in matters of police. No advantages result from it. On proof in court that a sale of landed property had been effected in a fictitious name, for which good and satisfactory cause cannot be shown, the sale should be held liable to be annulled on repayment of the principal of the purchase-money, no interest being allowed.

Furruckabad, Magistrate.

No return.

Mynpooree, Judge, Mr. Begbie.

States that being unable to reply to the 1st and 2d queries of the Law Commissioners, he called upon the officiating collector (Mr. Tayler), to furnish the required information, copy of which he submits.

Does not agree with the officiating collector in thinking that the practice of holding lands in fictitious names to be decidedly objectionable, without any countervailing

countervailing advantages. It should be taken into consideration whether the facility afforded by the existing law to the real proprietors, of evading the registry of their names, be not in one respect advantageous to the State, by inducing capitalists to connect themselves with land, who would not do so, if they were made amenable to the personal processes issuing from the collector and the tushildars. Perhaps, by affixing a heavier penalty to fictitious registry, such persons would be altogether deterred from embarking their capital in land; and the evil created by the new enactment would do the State more injury eventually, than at present arises from the practice which it was intended to repress. Cites enactments by which persons are subject to certain penalties for purchasing lands at public sales in fictitious names, and for wilful omissions and misrepresentations regarding the succession to estates by private transfer; and these, coupled with the risk the real proprietor incurs of being fraudulently supplanted by the nominal, though registered malgoozar, are, he believes, sufficient to prevent the practice of fictitious registry becoming inconveniently prevalent; and it is also to be hoped, that if the practice originated, as stated by the officiating collector, in distrust of the ruling power, the greater confidence reposed by the landholders in the justice and clemency of the British Government will gradually induce them to abandon a custom for which a necessity no longer exists.

Mynpoorie, Officiating Magistrate and Collector, Mr. G. Tyler.

The practice was at one time prevalent, but from the inquiries he has made, it appears never to have been carried to any extent in his district, and is now seldom, if ever, resorted to.

The practice is undoubtedly objectionable in Malgoozarry estates. It continually causes much delay and inconvenience to the revenue officers, as they generally have to call upon a person without property, while the real defaulter evades and escapes all the disagreeabilities of undergoing duresse, or attachment of his effects.

The forfeiture of all lands held under fictitious names, would undoubtedly have the desired effect of stopping the practice; but perhaps such a measure may be considered too severe; however, after a certain period, the lawful owner should be made to register in his own name such lands as are now held in fictitious names, and in default, a heavy fine should be imposed.

Etawah, Judge, Mr. J. Davidson.

The practice would seem to be by no means common in this part of the country. Has observed it to exist but in two kinds of cases; in the one, the object is a just one, in the second, clearly fraudulent; the first being where a parent has purchased estates in the names of his children who are minors, with the intent that each estate become the property of the child in whose name it is bought; the second, where individuals involved in debt, in order to avoid the just claims of their creditors, transfer their estates, or purchase new ones in and by fictitious names. No case has come within his own experience of native officers of Government holding lands under fictitious names.

Conceives that in every case where the intent has been fraudulent, the estate so purchased or transferred, should be liable to forfeiture; and in cases where the object has not been a dishonest one, that the purchaser through a fictitious name should be subject to a fine proportionate to the real value of the property so purchased, which might at the same time be considered subject to all the legal liabilities.

Etawah, Magistrate, Mr. S. G. Smith.

Has no reason for supposing that any subordinate officer under his control, or any other individuals, hold landed property secretly or under feigned names in his district.

Allahabad Division, Officiating Commissioner, Mr. R. Lowther.

Believes the practice is chiefly resorted to for the fraudulent purpose of evading the eventual execution of decrees of court. In the Cawnpoor district, where the landholders have extensive dealings with the Muhajans, fictitious transfers are by no means uncommon. Understands that Isurfurzee holdings are by no means uncommon amongst the officers of the civil court. Is of opinion that the preventive law cannot be too strict, and would impose confiscation and dismissal from office as the penalty. Considers that a specific enactment only can operate as a check and a warning; believes the practice to have originated with our rule, and to have continued because it has never been interdicted.

Allahabad, Judge, Mr. Dunsmure.

Should say that the practice is not now common in his district. It did prevail to a great extent during the early part of our administration up to 1810, but since that period it has gradually declined.

The practice is not invested with much antiquity, as it started into existence shortly after the cession of the district. Many circumstances induced it; during the lax public administration which immediately followed the cession, the rapid acquisition of landed property by all connected with the fiscal management of the district, and more particularly by those who exercised a very pernicious influence over the executive officers, led the holders of estates to have recourse to the practice for the purpose of securing their possessions; another cause which operated, was the dislike of many to be subjected to the inconvenience of a system which involved the arrest of their persons. In the case of females being proprietors of estates, the practice did, and does now, almost invariably obtain. Again, individuals resort to it to defeat the just claims of their creditors.

There is not a single advantage in the practice; on the contrary, it encourages fraud and bad faith, for families have been beggared by the dishonest conduct of those in whose names estates have been registered, merely from a repugnance on the part of the real proprietors to appear as the Government malgoozars. Entirely agrees with those who recommend that all lands be declared liable to forfeiture, whether held by purchase or otherwise, under fictitious names.

Allahabad, Joint Magistrate. Mr. P. Morland.

The custom does not prevail to any large extent in his district, and might easily be checked altogether, by declaring by law that after a certain period such property should be forfeited to Government.

Cawnpore, Judge, Mr. C. F. Thompson.

The custom has prevailed in the Cawnpore district, since it was surrendered to the British Government by the Nuwab of Oude in 1803.

The circumstances which led to its introduction were these:

The native officers in the establishment of the collectorship, were prohibited from purchasing landed property at the Government sales by Section 9, Regulation XXVI of 1803. These men, particularly the dewans and tuhseeldars, acquired large sums of money by fraud and extortion, and purchased estates sold by order of the collector, in the names of their relatives, connexions, or servants, or of imaginary persons, whose names were invented for the occasion, with a view to evade the provisions of Regulation XXVI. of 1803, and to obtain a lucrative investment for their money.

Native merchants have occasionally purchased landed property in the names of their gomastahs, or head servants, in order to avoid the inconvenience and annoyance of being apprehended by the tuhseeldars' chuprassees in the Mofussil, or the collectors at the sudder station, and the contingency of being summoned to attend, and detained in attendance at the magistrates' court, to answer complaints preferred by the Mofussil police, concerning want of co-operation, harbouring bad characters, &c. Natives of Oude, more particularly servants of the Oude Government, chukleedars, aumils, &c., who have acquired large sums of money by corrupt and oppressive means, have purchased landed property in this district, in the names of their relations or servants. Bankrupt merchants have done the same previous to a declaration of insolvency.

As to the advantages, native merchants who hold landed property in feigned names, derive some advantage from the continuance of the custom, as they are enabled to devote their time and attention to their private business, without fear of molestation from the collector, magistrate, and police. Should it be determined to prevent the practice by a regulation, the following provisions of law would effect the object in an efficient and equitable manner.

A general prohibition against acquiring landed property in feigned names, and a declaration making it unlawful for any person whatsoever to continue to hold land after the expiration of three calendar months, the penalty of a breach of the law to be a fine to Government, to be imposed by the civil court, at the suit of the collector, in a sum not exceeding six months' rent of the estate, and not less than three months.

Cawnpore, Officiating Magistrate, Mr. J. C. Wilson.

The practice is much more prevalent in Bengal and Behar than in these provinces. Knows of no instance of it amongst the officer at present attached to his court.

The

(B.) No. VI.
Respecting Lands held under Fictitious Names.

The practice originated from the hour at which these provinces were transferred by the Nuwaub Vizier to the British Government, and the prohibition consequent thereon against certain classes purchasing landed property; can safely assert that there are not only no advantages in the practice, but that it is vile in the extreme. Any person at the head of an office, who is aware that a certain estate is in the possession of a certain officer under him, can easily be on his guard against the illegal efforts made to favour it; whereas should the purchase, as is too often the case, have been made in a false name, his ignorance of the real purchaser may lead him into the wiles laid to deceive him. The best plan for putting a stop to the practice, would be an order to every owner of an estate, to avow himself within three months from a certain date, under a penalty of forfeiture; that in future any one should be allowed to purchase landed property, provided he bought it in his own name; the penalty of transgressing the order to be forfeiture of the estate.

Futtehpore, Judge, Mr. J. T. Rivaz.

Is not aware that any judicial officer of his court holds landed property under a fictitious name; only two advantages appear to him to accrue to a person who may hold landed property in such manner, viz. that creditors may be defrauded, and dishonest gains concealed; he is not aware of any honest advantages. A fine levied on the real and nominal proprietor, the fine on the former to be peremptorily levied on the landed property, and that on the latter on any property forthcoming, would, he has no doubt, effectually stop the practice.

Futtehpore, Magistrate, Mr. H. Armstrong.

The practice does not in the least prevail in his district; where it does exist, is of opinion that it should be put down by law, and the only provision which would most surely effect that object would be to render such tenures liable to forfeiture: has not been able to learn when the practice originated.

Bundlecund, Judge, Mr. S. Fraser.

There are five descriptions of persons who adopt the practice in the provinces under the jurisdiction of his court.

1. The Jageerdars of the neighbouring territory, who frequently hold lands in the name of their dependants, being unwilling to be brought individually into collision with the courts.
2. The natives of wealth and respectability, who object to appear in person in our courts.
3. Hindoos of all classes who hold lands in the name of different members of their family, wishing thereby to separate distinctly the property acquired by themselves from the joint claim of the other members of the family.
4. Subordinates of office who adopt the practice with a view to evade the orders of Government.
5. Persons not subordinates of office who similarly hold lands under fictitious names with a fraudulent intent.

The practice has apparently originated with the introduction of our courts, and legislation in regard to it, excepting in cases when it is resorted to for fraudulent purposes, should, he thinks, be adopted with great caution. Where fraudulent motives shall appear, sees no objection to declaring property held under fictitious names liable to forfeiture; nor does he perceive any other course by which an efficient check upon such proceedings can be exercised.

Banda, Officiating Magistrate, Mr. Donnithorne.

Believes the practice of holding landed property under fictitious names on the part of subordinate judicial officers, not common in these provinces, nor does he know any reason for concealment, as they (unlike revenue subordinate officers, by Section 14, Regulation XXV. of 1803,) are not prohibited by any law from holding lands in their own names.

Is not aware of any advantages or disadvantages to the public or the Government in the continuance of the practice as to subordinate officers of the criminal courts, nor indeed of the civil department, except as regards principal sudder ameens, sudder ameens, and moonsiffs.

To prevent the continuance of the practice, would recommend that the mere possession of lands situate within the jurisdiction of the office to which subordinate officers are attached, or their own jurisdiction in the case of sudder ameens and moonsiffs, in whosesoever name held, be considered a disqualification for office, unless such landed property clearly defined, had been specially allowed to be held; and in cases in which any deceit or concealment had been practised,

(B.) No. VI.
Respecting Lands held under Fictitious Names.

either at or after appointment, the offender should be subjected to fine and imprisonment, or only imprisonment, in the same manner, and to the same extent as for bribery or other malversation in office.

With respect to the holding of lands on the part of others than suborbinate judicial officers in fictitious names, believes the practice is very extensively prevalent. That it is coeval, or nearly so, with the present Government, and is in some degree caused by the proprietors being desirous of being free from all direct responsibility as to revenue and police. These are the advantages which they gain; and knows of no inconvenience or loss to Government or the community arising from the practice. Does not think it possible to prevent it by any enactment consistent with the justice and moderation for which the British Government has always been distinguished.

Humeerpore, Officiating Magistrate, Mr. T. Lean.

Gives 105 instances of estates supposed or known to be held in fictitious names in his district, and considers it probable there are many more.

Has no means of determining when the practice originated, but it appears to have been induced by the following causes:

The hope of avoiding the annoying responsibility in police matters which attaches to the registered proprietors, of avoiding attachment and sale of real and personal property, and imprisonment in the event of balance accruing; thus, in fact, making the estate alone answerable.

The wish of an independent chief taking an estate in farm, to avoid the indignity of having his name registered as malgoozar of another government. Can conceive no possible advantage in any one of the cases.

The law should provide that if all such fictitious tenures were not declared within a certain period to be given, the penalty of fine, attachment, or confiscation, should be incurred. No legal enactment appears necessary as regards farming tenures, as the collector making the settlement can always prevent, if he chooses, any such fictitious arrangements.

Benares Division, Commissioner, Mr. F. Currie.

Cases of persons holding land under fictitious names have very seldom come under his cognizance as commissioner of circuit, and then only in cases of dispossession under Regulation XV. of 1824; the origin of the practice in all which seems to have been the prohibition which hitherto existed to Europeans employed in the cultivation of indigo plants, &c. holding land in their own name. Has not discovered any inconvenience to police arrangements, or detriment to the interests of the State or individuals in the department of criminal justice, from the existence of the practice. Should it be deemed expedient to put a stop to the practice, imagines that it would only be necessary to declare it illegal, and that persons holding lands under fictitious names shall not be able to sue or defend suits relative to occupation, or forcible dispossession from such lands in the Foujdarry court.

Second Return submitted under the Court's orders.

The practice is not very prevalent, but exists to a certain extent.

Reply to Question 1.

Reply to Question 2.

Partly from rajahs and persons of rank and family considering it derogatory to them to have their names recorded as proprietors, and being desirous to avoid the personal process in case of balance of revenue, which the record of their names as proprietors would involve, and partly owing to the regulations heretofore in force, which prohibited Europeans holding lands in their own names.

Reply to Question 3. *Orig.*

None; but in the case of rajahs and others, it is unobjectionable, as the estate is, or ought to be, sufficient for its revenue.

Reply to Question 4.

As above, generally in all courts.

Benares, Judge, Mr. G. Mainwaring.

Is led to believe that the practice is very common within the jurisdiction of his court; it has always been the case, and he is informed that the practice prevailed previously to the acquisition of the province by the British Government; the present inducement to the practice is frequently of a fraudulent nature; viz. that by such property being purchased and held in the name of a servant or dependant relation, it may be exempted from the grasp of creditors. Many estates, too, have been purchased, or are held under fictitious names, by the class of natives prohibited from becoming landholders by Sec. 15, Reg. V. 1795. Is not aware that any advantages can accrue to Government by

(B.) No. VI. Respecting Lands held under Fictitious Names.

by the continuance of a practice at once illegal, and of a fraudulent tendency. Is not prepared to specify any rule that would effectually put a stop to the practice.

Benares, Magistrate, Mr. D. B. Morrieson.

The practice is not common in this part of the country. It is, however, not uncommon for such property to be held in the name of other persons than the real owners, though such persons are not fictitious, but existent; a son, a brother, or relative of any kind; and frequently a gomastah is the apparent or recorded proprietor, while the real one keeps himself behind the scene.

It is an old practice, and he believes originated when the country was in an unsettled state, with no permanent government, or one which had neither the confidence nor the good wishes of the community; the custom once having taken root, there will be difficulty in overcoming it; but is of opinion that it is on the decline. There are no advantages attending the practice; on the contrary, it enables fraudulent persons to cheat with greater ease, and to set both their creditors and the law at defiance. It is desirable, therefore, that the practice should be put a stop to, though cannot see how any special enactment can be of any avail; thinks the practice will decline of itself; and in proportion as the respect and consideration attending on the possession of landed property shall increase, the less inducement there will be for concealing the name of the real proprietor.

Goruckpore, Judge, Mr. W. B. Jackson.

The practice is common at Goruckpore, but not so much so as in other parts of India where he has been employed, Behar and Allahabad for instance. The object in using a fictitious name is undoubtedly concealment. During the native governments the practice was very unfrequent, although, as every rich man was liable to extortion in proportion to his riches, it was his object to conceal the extent of his property as far as possible; the same object now exists with regard to native officers of Government, or others who have obtained property in an illegal manner, and are desirous to conceal the acquisitions from Government.

Knows of no advantages at present in allowing such a practice to exist, excepting the convenience of making settlements of property or gifts, the object of concealing ill-gotten wealth is not a legitimate one, and the sooner the means of doing so are removed the better. Sees no sufficient reason for allowing the practice to continue, and would fix a day, after which no purchases made in fictitious names should be valid; looks on the practice as conducive to the concealment of fraud.

Goruckpore, Magistrate, Mr. E. A. Reade.

Does not think the practice so common in his zillah as in other districts in these provinces; the practice is resorted to for concealment's sake, but it has obtained from other motives; does not see any advantage from the practice, except that it may have the effect of stopping litigation. No other provision of law appears requisite than the introduction of a rule that all those persons, servants of the state, or others, who acquire by gift, &c. properties, whether for a limited term, or permanently, have the opportunity of registering the name of whom they please, but at the time of registering must record the acquisition, by whom made, either in person or by attorney.

Azimgurh, Officiating Judge, Mr. A. C. Heyland.

The practice is by no means so common in his district as in most others; in fact, since the late settlement, when the name of each landed proprietor was so prominently brought forward, and since the late Act, allowing British subjects to hold lands in their own names, there are but very few instances remaining.

Conceives there cannot be any public advantage from persons holding their lands under fictitious names; and the prohibiting such practice would give general satisfaction. The private advantages are all of a fraudulent nature, except as regards the higher natives.

Conceives there would be no injustice in declaring the practice in future illegal, and, in the event of its being brought to the notice of the collector, that such land will be liable to confiscation, and the holder, if in the employ of Government, dismissed.

Azimgurh, Officiating Magistrate, Mr. R. Montgomery.

The practice of holding landed property, sold in execution of decrees of court, under fictitious names, was more common during the time British subjects were prohibited from holding lands in their own names than it now is; the practice now chiefly prevails amongst the native omlah and their relatives,

(B.) No. VI. Respecting Lands held under Fictitious Names.

but it is not common, and where it does exist, it is chiefly with regard to lands sold in execution of decrees of court. The practice originated with the framing of the different Regulations prohibiting the native omlah from purchasing estates, sold for arrears of revenue; but this appears to be a mistaken idea as regards sales in execution of decrees of court, which do not appear to be prohibited. No advantages result from it; on the contrary, it often leads to a great deal of litigation afterwards. Thinks the best preventive would be to pass a law declaring that the person in whose name the estate was purchased, should be acknowledged as the proprietor, in case of any litigation on the subject.

Jaunpore, Judge, Mr. D. B. Morrieson.

Refers to the opinion given by him as collector and magistrate of Benares.

Jaunpore, Magistrate, Mr. C. R. Tulloh.

The practice exists in his district, but to what extent it is not possible for him to say, but does not think to any great extent; it was much more common prior to the Act authorising Europeans to hold lands.

Cannot say when the practice originated, or what were the circumstances which induced it.

Is not aware what advantages accrue from the continuance of the practice.

It is difficult to determine on the best measure for preventing it; but on the whole, considers forfeiture of the land, and a heavy fine imposed on the person in whose name it was purchased, would, in a great degree, put a stop to the practice.

Mirzapoor, Judge, Mr. H. H. Thomas.

Has no reason to suppose that the practice is less common in the district of Mirzapoor than in other parts of British India. It would be difficult to state with accuracy when it originated, but it may be traced up to the time of Mr. Jonathan Duncan's settlement, and is informed that it prevails even under the native governments; the main object is deception. Cannot call to mind the slightest advantage which this extensively mischievous practice possesses; on the contrary, the total abolition appears more likely to lead to most wholesome and beneficial results. The provisions of the law for preventing it should affect not only the native officers of Government, but all persons whatever; and forfeiture should be declared the penalty of its infringement.

Mirzapoor, Magistrate, Mr. Woodcock

The practice is as common in his district as in any other; the custom has arisen in several ways; 1st. Servants of Government have made purchases, and held land or other tenures (which they are not allowed to do by the Regulations of Government,) in the names of their relations and servants, who alone can be acknowledged as the ostensible proprietors; 2d. Persons of rank and wealth, who would object to appear before the several courts on various occasions, hold estates in the names of their servants in order to avoid such inconvenient personal calls; 3d. Purchases are also made at the Government sales, in fictitious names, on the part of the defaulting proprietors of estates, and hence ensues a variety of roguery and litigation. There can be no real advantage or convenience in the continuance of the practice, since parties can quite as well send their mooktear or vakeels to the courts. A positive prohibition and forfeiture of all right and title to the estate, on proof such estate being held in a fictitious name, would prevent the continuance of the practice, which appears highly objectionable.

Ghazeepore, Judge, Mr. J. P. Smith.

Reply to Question 1. The word fictitious, as applied generally to transfers of landed property, admits of two constructions, which must be separately considered:—

First. If, by fictitious, we are to understand imaginary or absolutely non-existent, then I apprehend the practice of purchasing and holding landed property in a name without an owner, is of very rare occurrence, for obvious reasons.

But, secondly, taking the word in its other sense, of false or not genuine, as for instance, when a feigned name, *i. e.* the name of a person possessing no interest or right in the matter, is purposely substituted in lieu of that of the real party to a transaction; the practice adverted to is known to be very prevalent, in public as well as in private transfers of real property. There is, however, a third description of sale, by no means uncommon in this province; differing, indeed, essentially from both the foregoing, but still liable, from its resemblance, to be confounded with them; I mean the purchase of land in the

name

name of a son or relative, during the purchaser's lifetime, for his or their exclusive benefit or otherwise, as the case may be; but avowedly and openly made, without any attempt at concealment. Transactions of this character, though not embraced in the inquiries of the Law Commission, appear deserving of notice, as intimately connected with the general question of modifying the law.

Reply to Question 2. In regard to the origin and causes which led to the adoption of the practice in question, there is little doubt that under the native governments of India it was by no means so common as under our rule; and for this simple reason, among others, that in those times, when might was right, and the end was considered to justify the means, the mere cloak of a dependant's name appearing on the rent-roll could afford to the real proprietor little or no protection against the tax-gatherer's coercive measures. Their operation was generally brought to bear upon the *bonâ fide* possessor of the property, or such of his connexions as might happen to fall into the great man's power, without much attention to names and records; thus defeating the main object of concealment.

A mode of proceeding so arbitrary and off-hand did not, however, square with English notions of justice and good policy, and consequently, the introduction of our rule gave birth to a new system, the main principle of which was, to recognise as the real proprietor the person ostensibly borne upon the record; and accordingly the law, in its anxiety for the liberty of the subject, ensures exemption from coercive process to every one, save the party actually under engagements to Government, even in cases when the fact of private connexion or partnership may be a matter of notoriety. The same reasoning applies with equal force to the landholders' obligations and liabilities in regard to matters of police, and the maintenance of public order. The mere chance of being required to appear in person before a court of justice, to answer for the misdeeds of agents or dependants, the being subject to the caprice and demands of the local police officer on every trifling occasion of real or pretended disturbance, to say nothing of other annoyances incident to the possession of wealth and station in a country where discretion has so wide a range, and the well-being of society depends so much upon the personal character of the man in authority, are, with the native of rank, considerations quite sufficient to account for the frequent resort to the practice under discussion; and so long as prejudice maintains its sway, and public spirit is at so low an ebb, they will continue to produce a similar result, unless put down by law. The mainspring, however, of this mischievous system, may be traced to the causes so fully detailed in the preamble of Regulation I. 1821; a state of things which naturally resulted from the great power and confidence reposed in Government native officers on the one hand, combined with the ignorance of the owners of the soil on the other. It is a well-known fact, that no zillah in the province of Benares is without its two or three great families, wealthy, powerful, and according to native notions, respectable; whose history, if inquired into, would show how much they were indebted for the acquisition of their property, to undue influence and intrigue.

Reply to Question 3. Namely, what are the advantages to be expected from a continuation of the practice? I am of opinion, that like a monopoly, the benefits are all on the side of the few, at the expense of the many; and, moreover, that those benefits are highly pernicious in their effects upon the welfare of the community at large, by being, in many cases, perverted into a licence for the perpetration of fraud and dishonesty with impunity to the designing rogue, and to the injury and prejudice only of the ignorant and unsuspecting. Thus, for instance, the fraudulent debtor takes advantage of this facility of substituting one name for another in the documents and title-deeds which he has occasion to bring into court, to evade all risk of personal inconvenience arising from arrest and imprisonment; while it is no unusual thing, in public sales, in execution of decrees, for a defendant to hire a man of straw, willing, for a trifle, to incur the penalty of a month's imprisonment awarded by law for failure in making good the purchase-money, merely for the purpose of delaying the sale. This is a device which has more than once been successfully practised in my own experience, and, according to my idea, affords a strong argument in favour of imposing some more severe legal penalty than at present exists. In a word, I consider the practice in question not only wholly indefensible, but

(B.) No. VI.
Respecting Lands held under Fictitious Names.

attended in its practical results with unmixed evil, both as regards the interests of the State, and the welfare of society; and I am confident that the interference of the Legislature to check its further progress, would be hailed with joy by the great majority of the people.

Reply to Question 4. In the event of its being determined to prohibit the practice, I do not see how the object could be more effectually and conveniently attained, than by the enactment of a law rendering all lands liable to forfeiture which may hereafter be purchased under fictitious names by any parties, whether native officers of Government or others; and also requiring all parties at present holding landed property under fictitious names to appear before the collector within a specified period (say six months), and give in a true and faithful statement of the *bonâ fide* proprietor's name and condition, under the penalty of forfeiting all right and title to any property so illegally held subsequent to, and in contravention of the said law.

I would not, however, advocate any legislative interference whatever with the liberty of any person to dispose of his property, or make purchases in the name or names of his sons, or near relatives, provided the act was free from concealment and disguise.

Ghazeepore, Officiating Magistrate, Mr. W. Hunter.

Believes the practice to be common in his district. It is difficult to say when it originated, but considers the circumstances which must have chiefly led to induce it to have been the acquisition of large sums of money by improper means, and a desire to lay it out advantageously in the purchase of landed property without the offenders exposing themselves. Knows of no measure which could be taken to prevent it, besides that of rendering land acquired by such means liable to forfeiture; fears, however, that even this would not prove effectual.

Saugor and Nerbudda Territories.

The practice does not obtain in these territories where the proprietary right in the soil has been pronounced to reside in the Government.

(signed) *H. B. Harington,* Register.

Legis. Cons. 23 Nov. 1840. No. 15. Enclosure.

EXTRACT from the Proceedings of the Sudder Adawlut, under date the 27th June 1838.

READ letter from the Officiating Secretary to the Indian Law Commission, dated 30th June 1837, on the subject of the expediency of rendering all lands liable to forfeiture which have been purchased under fictitious names by any parties, whether native officers of Government or others.

Also read letters, dated respectively the 25th October and 4th November 1837, and 10th May 1838, from the Provincial Court in the western division, submitting their own, and the opinion of the several judicial officers subordinate to them, touching the expediency of rendering all lands liable to forfeiture which have been purchased under fictitious names.

Also read letters, dated respectively the 23d October 1837, 28th February and 21st March 1838, from the Provincial Courts in the northern, southern, and centre divisions, submitting their own sentiments, and the opinion of the several subordinate judicial authorities in those divisions, on the subject of the expediency of rendering all lands liable to forfeiture which have been purchased under fictitious names.

1st. In the letter from the Indian Law Commission above recorded, the Commissioners observe, that they are fully impressed with the inconveniences which result from the common Indian practice of purchasing and holding property in fictitious names, but that they feel it would be unsafe to make a general change in the existing law on so important a point, without a further knowledge than they now possess of the circumstances under which the practice has sprung up in every part of India, and accordingly, they have requested information on the following points.

First. Whether the practice of holding landed property under fictitious names is common in the provinces under the jurisdiction of this court?

2d. From the communication addressed to the Court of Sudder Adawlut by the

the local judicial officers, it would appear that the practice is very common in the southern and western divisions, comprising the districts of Tinnevelly, Madura, Tanjore, Trichinopoly, Salem, Coimbatore, Malabar, and Canara. In the northern division, however, the practice is said to exist only in the zillah of Chicacole, and in the centre division. It is reported to be common in the zillah of Cuddapah, and to exist to a limited extent in the district of Cuddalore, but not to be known in any other zillah within the centre division.

3d. The experience, however, of the Court of Sudder Adawlut leads them to believe, that the practice of purchasing or registering lands in fictitious names is resorted to more or less in every zillah included within the jurisdiction of the Provincial Courts in the northern and centre divisions; and entertaining this opinion, the court are required to report.

Secondly. When that practice originated, and what were the circumstances that induced it?

4th. The particular period at which the practice may have commenced is not known, but almost all the judicial officers in the provinces concur in opinion that it has been partly induced by the prohibition contained in Regulation XXVI. of 1802, against native officers of the collectors' cutcherries, or the collectors' private servants becoming purchasers of lands sold at public sales in the zillahs in which they may be respectively employed; also by a desire to evade the provisions of the Hindoo and Mahomedan local laws of inheritance, and by a hope thereby to conceal such property from creditors; and in the western division, it is said to be induced also by the superstitious ideas entertained by the natives of that coast, as to the better luck of individuals of a family whose names are consequently set forth as purchasers; also to prevent inconvenience to parties purchasing land, who may be unable personally to attend, and to go through the peculiar forms of sale observed in Malabar. But there is no doubt that it is also extensively practised, in order, if an arrear of revenue should occur, to prevent the issue of revenue process against the real owner.

5th. The third point on which information is required, is as to whether there are "any advantages in the continuance of that practice, and if there be, what are those advantages?"

6th. The only advantages that individuals derive from the practice, are those specified in the latter part of the answer to the preceding question; but while it is shown that no advantages of importance are derivable from the continuance of the practice, the local authorities have almost unanimously agreed that many and great are the evils which the system of purchasing lands in fictitious names has given rise to; and of the inconveniences resulting from the practice, the Law Commissioners state they are fully impressed.

7th. In the event therefore, of its being determined to prevent the continuance of the practice, the Indian Law Commission are desirous, in the fourth place, of being informed what provisions of law would most surely and conveniently, and with least risk of injustice to individuals, effect that object?

8th. In the opinion of the Court of Sudder Adawlut, the continuance of the system would be effectually put a stop to by the enactment of a law to the effect, that all sales of land shall be registered, and no sale of land by public officers be allowed, excepting through the collector of the district.

9th. That for this purpose an office or offices of general registry shall be established in each collectorate; and that whenever lands are sold, mortgaged, or otherwise alienated by a written deed, such deed shall not be admitted in any court of justice or elsewhere as valid, unless it has been registered.

10th. That the execution of deeds for the sale, mortgages, or other alienation of land in fictitious names, shall be declared illegal, and that such deeds, whether registered or not, shall be deemed invalid and inadmissible in any court of justice or elsewhere.

11th. That persons holding lands, whether in their own names, or in the names of others at the time of the promulgation of the enactment, shall be required to register their title deeds within a prescribed period, and that on its expiration, deeds for land not so registered, shall not be admissible in any court of justice or elsewhere.

12th. That pottahs and muchilkars for the mere cultivation of lands for any period under three years shall not be required to be registered.

13th. On the subject of the expediency of establishing an office of general

(B.) No. VI.
Respecting Lands held under Fictitious Names.

registry, the court of Sudder Udalut have lately taken occasion to address the Government of this Presidency, and the judges have suggested that a copy of those papers be furnished to the Supreme Government, in view to their consideration by the Law Commission.

Ordered, that extract from these proceedings, together with copies of the papers recorded above, be forwarded to the Secretary to the Indian Law Commission.

(True extract.)

(signed) *W. Douglas,* Register.

(No. 376.)

Legis. Cons. 23 Nov. 1840. No. 16. Enclosure.

From *G. J. Beauchamp,* Esq. Register N. P. Court, to the Register to the Court of Sudder Adawlut.

Sir,

I AM directed by the Northern Provincial Court, with reference to your letter of the 8th of August, "transmitting a copy of a communication from the Secretary to the Law Commission, on the subject of the expediency of rendering all lands liable to forfeiture which have been purchased under fictitious names by any parties, whether native officers of Government or others, and requesting that the court will submit their own sentiments, and those of the several zillah and assistant judges within the jurisdiction, on the four points proposed for consideration," to submit the enclosed reports received from the several judicial officers within the northern division, and to state that the officiating third judge, the only judge present at the station, has the same opinion as Mr. Thomas, the judge of Masulipatam, as to the motives which led to the practice of purchasing lands under fictitious names. This practice appears to the acting third judge highly objectionable, inasmuch as it has the tendency of rather encouraging the temptation to prejudice public interests, than being productive of security, or any other legal advantage, and ought in consequence to be materially checked.

2. The measure by which this object can be met, would be, in the acting third judge's opinion, to make it a general rule that all purchases of a similar nature, under any circumstances whatever, will on detection be nullified, and the landed estate forfeited, and the persons guilty of the fraud, or of being concerned in the collusion, visited with a pecuniary penalty, adequate to the rank in life of the party and circumstances of each case.

3. The suit on the Provincial Court's file alluded to by Mr. Rohde, cannot, in its present state of uncertainty, be a criterion on which to form an opinion; but there are, however, reasons to doubt if the fraudulent procedure now in agitation has not been resorted to in that case to the end of depriving a brother of his share of patrimonial property.

I have, &c.

Masulipatam, N. P. C. Register's Office, 23 October 1837.

(signed) *G. J. Beauchamp,* Register.

RETURN from the Acting Judge of Chicacole to Precept No. 1038.

THE acting Judge has the honour to acknowledge the receipt of the foregoing precept, transmitting certain interrogatories proposed by the Indian Law Commissioners, on the expediency of rendering all lands liable to forfeiture which have been purchased by any parties, whether native officers of Government or others, and herewith transmits his sentiments upon the four points therein proposed.

Given &c. at Chicacole, 30 August 1837.

(signed) *A. Freese,* Acting Judge.

Q. 1st. Is the practice of holding landed property under fictitious names, common in the provinces under the jurisdiction of your court?

2d. If so, when did that practice originate, and what were the circumstances that induced it?

A. The practice of holding lands under fictitious names, is common in the provinces under the jurisdiction of this court. The practice of holding lands under fictitious names has existed for many years, and I believe to have originated in two causes:—

1. From the desire of native servants to conceal from the authorities, the circumstance of their having obtained possession of lands.

2. To defeat the ends of justice and prevent the execution of the decrees of the courts. With regard to the first of these reasons, I have seen many instances of its having occurred, not only in this part of the country, but in the ceded districts, and it may perhaps be acceptable to point out the mode in which it was done in one instance that came to my knowledge. In the ceded districts a remission of 25 per cent. upon the survey assessment by Colonel Munro, is granted upon all dry land, but should the owner convert the dry land into gardens by constructing wells, no additional tax is levied, though the remission is not granted; such lands, therefore, become very valuable, and in the instance I allude to, a native tehsildar contrived, through his influence, to make many of the owners resign the dry lands they had converted into gardens, to him in reality, but nominally to men who were his agents and relations. Native public servants are prohibited by Sec. 20, Regulation XXVI. of 1802, purchasing lands sold at public sales in the zillahs in which they may be respectively employed, but there is nothing in the Regulations to prevent their obtaining lands by private bargains in their own or others' names, provided the land at the time is not liable to public sale for arrears of revenue.

3d. Are there any advantages in the continuance of that practice, and if there be, what are those advantages?

I can see no real advantage in the continuance of the practice, though the interference with it might be deemed too great an inquisition into the private affairs of individuals.

4th. In case of it being determined to prevent the continuance of that practice, what provisions of law would most surely and conveniently, and with least risk of injustice to individuals, effect that object?

Should it be determined to interfere with the continuance of the practice, I consider the only method would be to compel the registration of all sales, either in the office of the collector or in the courts, and which registration should be extended to mortgages, and certainly to mortgages without usufruct, as it is by such fictitious mortgage bonds the ends of justice are chiefly evaded.

(signed) *A. Freese*, Acting Judge.

RETURN from the Acting Assistant Judge of Vizagapatam to Precept No. 1039.

IN conformity to the orders contained in the extract of proceedings which accompanied this precept, and which directed the several officers to whom it was addressed, to state, 1st, Whether the holding lands under fictitious names, is common within their jurisdiction? 2dly, If so, how the practice originated? 3dly, What advantages have arisen therefrom? and 4thly, What would be the best mode of checking this practice?

The acting assistant judge begs to state that he concludes the practice is not unknown, but that any information he could give on the subject would not be derived from any official source, as he does not remember any instance being proved before him; that besides the collector of this district having, he believes, been addressed on the subject by the Board of Revenue, his information will

(B.) No. VI.
Respecting Lands held under Fictitious Names.

comprise all that can be stated on this head, on which the acting assistant judge does not consider himself able to offer anything further than vague suggestions, not founded on experience; he, however, begs to state from hearsay, that he believes it is not improbable a reference to the case No. 54 of 1828, Provincial Court's file may throw some light on the subject.

Given, &c. at Vizagapatam, 2 September 1837.

(L. S.) (signed) *J. Rohde,*
Acts Assist Judge.

RETURN from the Zillah Judge of Rajahmundry to Precept No. 1040.
Masulipatam Zillah Court of Adawlut.

(L. S.)

1. THE Judge has the honour to acknowledge the receipt, on the 21st ultimo, of the orders contained in the precept under date 14th ultimo, accompanied by extract from the proceedings of the Provincial Court of Appeal for the northern division, with instructions to submit his sentiments upon the four points proposed in a communication from the Officiating Secretary to the Indian Law Commission on the subject of the expediency of rendering all lands liable to forfeiture which have been purchased under fictitious names.

2. He begs to state, in reply to the first point, that from inquiries which he has been enabled to make, it would appear that the practice has obtained in this zillah of holding lands under fictitious names, and to some extent.

3. On the second point, that it originated at a period antecedent to the establishment of the courts of Adawlut, but has probably increased in consequence of the orders and Regulations which have been promulgated, whereby the officers of Government in the Revenue Department are prohibited from purchasing lands sold in satisfaction of arrears of revenue, as provided for in Regulation XXVI. of 1802, and the circumstances which have led to the practice in question, may be stated to be the general feeling of insecurity under which the natives of this country have lived, and which has occasioned many to shrink from the appearance of possessing much landed or other property, as well also from the necessity felt by many of them to resort to methods to defeat the unwise provisions of their own laws, which direct the equal distribution of property amongst the heirs of the deceased; another reason has also been assigned in inducing natives to resort to this practice, viz. that it enables them to become possessed of property by purchase from their own immediate relations, rather than assist them with the means of retaining the same, which, by general concurrence, it is supposed relatives should be prompt to do for each other; also in the event of a decree of a court being against them, or demands of whatever nature, that their property may not be liable to attachment for the same, they hold it under a fictitious name; such are the most prominent circumstances and causes which have led to the practice in this zillah.

4. On the third point, namely, that the motive to resort to this practice is strong, and the advantages many, must be inferred from its having been persisted in, notwithstanding the serious losses to which many subject themselves by assigning their property over to the will of those in whom they often find they have misplaced their confidence, as well also from the practice having continued, notwithstanding the provisions of Sec. 17, Regulation XXVI. of 1802, which enacts, "that all lands purchased at public sales under fictitious names, shall, on proof before the Udawlut courts, be liable to forfeiture at the pleasure of the Governor in Council;" he is not aware of any other advantages attending this practice than those already stated.

5. With reference to the fourth point he would observe, that in case of its being determined to prevent the continuance of the practice, it will be necessary to enact a Regulation declaring all lands purchased and registered under fictitious names to be the property of Government.

Given, &c. at Rajahmundry, 8th September 1837.

(signed) *James Thomas,* Judge.

(B.) No. VI.
Respecting Lands held under Fictitious Names.

RETURN from the Acting Assistant Judge of Guntoor to Precept No. 1043.

THE acting assistant judge has the honour to acknowledge the receipt of the foregoing precept, forwarding an extract of proceedings of the same date, and a copy of a letter from the Officiating Secretary to the Indian Law Commission, on the subject of the expediency of rendering all lands liable to forfeiture which have been purchased under fictitious names, whether by native officers or others, and requesting the opinions of the several zillah and assistant judges on four questions, to which the acting assistant judge has the honour to reply as follows:

1st. Is the practice of holding landed property under fictitious names common in the provinces under the jurisdiction of your court?

As far as the acting assistant judge has been able to learn, the practice does not prevail to any great extent in this zillah, and he does not know of any suit in this court in which it has appeared that such a circumstance has occurred.

2d. If so, when did that practice originate, and what were the circumstances that induced it?

It is probable that whenever lands have been held under fictitious names, it has originated in the prohibition against public servants purchasing lands at sales, under Regulation XXVI. of 1802, and Regulation VII. of 1832, and from the desire of concealing such property from creditors or co-partners.

3d. Are there any advantages in the continuance of that practice; and if there be, what are those advantages?

The acting assistant judge does not know of any advantage whatever in the practice, and thinks that any measures calculated to prevent it would be extremely salutary.

4th. In case of it being determined to prevent the continuance of that practice, what provisions of law would most surely and conveniently, and with least risk of injustice to individuals, effect that object?

No cases of this nature having ever come before the acting assistant judge, he feels himself incompetent to state what provisions of law would most surely and conveniently accomplish the end proposed. Declaring all lands so held liable to forfeiture to Government, with a proviso, that where it may appear to have been done for the purpose of defrauding any person or persons of their just rights, those rights would invariably be held inviolate, would be the best means of preventing the practice which the acting assistant judge is aware of.

Given, &c. at Guntoor, 14 September 1837.

(signed) *E. Newberry,*
(L. S.) Acting Assistant Judge.

RETURN from the Acting Assistant Judge of Masulipatam to Precept No. 1041.

(L. S.) Masulipatam Zillah Auxiliary Court.

IN return to the foregoing precept, forwarding copy of a letter to the Register of the court of Sudder and Foujdarry Adawlut, from the Officiating Secretary to the Indian Law Commission, dated the 30th June 1837, directing the acting assistant judge to submit his opinion on the four points therein proposed, regarding the forfeiture of all lands which have been purchased under fictitious names by any parties, whether native officers of Government or others, the acting assistant judge has the honour to forward copy of a letter with an enclosure received in answer to one addressed to the collector of Masulipatam from this court, from which it appears that the custom of purchasing lands under fictitious names does not obtain in this zillah; and, in consequence, the acting assistant judge does not offer any opinion on the subject.

Given, &c. at Masulipatam, 10 October 1837.

(signed) *R. Davidson,*
Acting Assistant Judge.

(B.) No. VI.
Respecting Lands held under Fictitious Names.

From *J. C. Wroughton*, Esq. Collector, Masulipatam, to the Acting Assistant Judge in the Zillah of Masulipatam.

Sir,

WITH reference to your letter of the 26th ultimo, calling for information relative to the practice of holding lands in this district in fictitious names, I have the honour to forward copy of my letter on the subject to the Board of Revenue, under date 19th August last.

I have, &c.

Masulipatam Zillah Collector's Circuit, Cutcherry Chullapully, 5 October 1837.

(signed) *J. C. Wroughton*, Collector.

(No. 87.)

From *J. C. Wroughton*, Esq. Collector, Masulipatam, to the President and Members of the Board of Revenue, Fort St. George.

Gentlemen,

WITH reference to your Board's proceedings of the 24th ultimo, forwarding copy of a communication from the Secretary to the Indian Law Commissioners, on the question of the expediency of rendering all lands liable to forfeiture which have been purchased under fictitious names, and directing me to state whether the practice alluded to exists in this district, I have the honour to state, that from a reference to the records of my office, and the inquiries I have made on the subject, it does not appear that an instance of the kind is traceable. In the event of such cases occurring, the provisions of Regulation XXVI. 1802, of the Madras code, render such lands liable to forfeiture by Government.

I have, &c.

Masulipatam, Collector's Cutcherry, 19 August 1837.

(signed) *J. C. Wroughton*, Collector.

RETURN from the Zillah Judge of Nellore to Precept No. 1042.

THE Judge in the zillah of Nellore has the honour to acknowledge the receipt of this precept, which accompanied an extract from the proceedings of the Provincial Court of Appeal, Northern Division, dated 14th August last, together with a copy of a letter from the Officiating Secretary to the Indian Law Commission to the Register to the Court of Sudder and Foujdarry Adawlut, under date the 30th June last, requiring opinions on certain points regarding the purchasing and holding of landed property under fictitious names; and begs to state, that from inquiry which has been made into the records of this office, it does not appear that such practice exists in this zillah; but it appears that ryots are sometimes in the habit of procuring from the collector pottahs in the names of their friends, relations, or dependants, for the circar aumany lands, but it does not appear that they do so with any fraudulent intent. The continuance of this practice may tend to increase the cultivation of circar aumany lands; but when lands of any description are held under false names, with a fraudulent intention to injure the legal sharers in the property, or occasion a loss to Government, it is of course indispensable that the continuance of such practice should be prevented; and the Judge is of opinion that the object could be effected by fixing a certain period of time for the individuals holding landed property under fictitious names to have their actual names entered in the registry in the collector's cutcherry.

Given, &c. at Nellore, 17 October 1837.

(L. S.) (signed) *R. Grant*, Judge.

(B.) No. VI.
Respecting Lands held under Fictitious Names.

RETURN from the Zillah Judge of Nellore to Precept No. 1267.

THE Judge in the zillah of Nellore has the honour to acknowledge the receipt of this precept, which accompanied an extract from the proceedings of the Provincial Court of Appeal, northern division, under date the 11th instant, requiring to submit the return to this precept of the 14th August last, calling for his opinion upon certain questions as regards the purchase of land in fictitious names, and begs to state that the return to the precept has been to-day.

Given, &c. at Nellore, 17 October 1837.

(L. S.) (signed) *R. Grant*, Judge.

(True copies.)

(signed) *W. Douglas*, Register.

From *H. A. Brett*, Esq. Register, Chittoor Provincial Court of Appeal, to the Register to the Court of Sudder Adawlut, Fort St. George.

Sir,

WITH reference to your letter dated the 8th August 1837, I am directed by the Centre Provincial Court to transmit copies of returns from the several zillah and assistant judges in the centre division to this court's precept, dated the 12th of the same month, submitting their sentiments on the expediency of rendering all lands liable to forfeiture which have been purchased under fictitious names by any parties, whether native officers of Government or others.

1st. Is the practice of holding landed property under fictitious names common in the provinces under the jurisdiction of your court?

The Court have reason for believing that the practice of holding landed property under fictitious names does exist within the centre division, and this opinion is borne out by the return of the zillah Judge of Cuddapah, as well as from the circumstances of Chinatumby Moodelly having, in O. S., No. XVIII. of 1829, sued one Septen Lazar, *alias* Chamier, in the Supreme Court, and obtained a decree in his favour, when the villages of Noombul and Pooliambut were sold by public auction in execution of their decree, and when the aforesaid Chinatumby Moodelly caused these two villages to be purchased for him by and in the name of his friend, Colah Ragava Chitty; the assignable cause for this deceptive purchase was, that as Chinatumby Moodelly was himself a party to the suit, he must have conceived that the purchase was not legal under the provisions of Regulation XXVII. A. D. 1802.

2d. If so, when did that practice originate, and what were the circumstances that induced it?

The practice is supposed to have originated some short time after the promulgation of Regulations XXVI. and XXVII. A. D. 1802, which prohibited the purchase of lands as well by public officers as by parties in the suits. Nothing is more common than fictitious transfer of property, and nothing more baneful to the due administration of justice than this growing evil, which is now invariably pleaded in bar of execution of the process of the civil courts.

3d. Are there any advantages in the continuance of that practice; and if there be, what are those advantages?

It appears that the greatest objections exist to this practice of deception, while no possible advantage can result from its continuance.

4th. In case of its being determined to prevent the continuance of that practice, what provisions of law would most surely and conveniently, and with least risk of injustice to individuals, effect that object?

It should be within six months declared, that from and after the promulgation of the Regulation, prohibiting the holding of lands under fictitious names, that all lands so entered in the sircar accounts should be transferred to the names of the real proprietors; that

(B.) No. VI.
Respecting Lands held under Fictitious Names.

that in failure of the parties attending to this provision, it should be at the option of individuals to bring to the notice of the collector such infringement of the Regulation, who should, if after an investigation of the charge see grounds for crediting the information, sue the parties in the civil courts; while a provision should be enacted, by which the courts should be authorised to declare all lands held under fictitious names as having escheated to Government, with further authority to fine the party aiding the deception, in a sum equal to a moiety of the value of land recovered, to be credited to Government; it should further be competent to the Court to award to the party first giving notice to the collector, 10 per cent. of the actual value of the property awarded to the Government; curnums or tehsildars should be required to register all divisions of estates which take place within his division, and each curnum should register every mortgage of landed as well as personal property in each year. These registers should be sent every six months to the collector's office, and then copied in a register to be kept for the purpose, and the original record returned to the village: a small fee might be allowed for the registering of each mortgage.

The number, date, and names of the mortgages and mortgagee should be entered in the register, as well as the quantity and description of the land mortgaged, likewise the nature and value of the personal property; the village and district in which it is situated should be also noticed, as well as the conditions of the mortgage, and the amount borrowed on that security.

The returns made by Mr. Paternoster and Mr. Baynes appear to contain more correct opinions on the subject than those furnished from any of the other judges within this division.

The Court would have transmitted the returns relating to the above question at an earlier date, but they were detained till the arrival of the acting second Judge, Mr. Lewin, who it now appears has already submitted his opinion on the subject, while conducting the duties of principal collector of Canara. Mr. Lewin begs that the opinion he then expressed may be referred to for the present occasion.

I have, &c.

Chittoor Civil Provincial Court of Appeal, Register's Office, 21 March 1838.

(signed) *H. A. Brett*, Register.

From *F. Lascelles*, Esq. Judge, to the Register to the Provincial Court of Appeal, Centre Division, Chittoor, dated the 16th November 1837.

Sir,

In return to the annexed precept which accompanied an extract from the proceedings of the Provincial Court of Appeal for the centre division, under date the 12th, received on the 23d August last, forwarding copies of two letters, one from the Register of the Sudder Adawlut, dated the 8th of the same month, and the other from the Officiating Secretary to the Indian Law Commission, dated the 30th of June last, annexing four questions on the subject of the expediency of rendering all lands liable to forfeiture which have been purchased under fictitious names by any parties, whether native officers of Government or others, with directions to submit the opinions of the zillah Judge thereon. The zillah Judge has the honour in reply to state as follows:

1. Is the practice of holding landed property under fictitious names common in the provinces under the jurisdiction of your court?

It does not appear to be customary to hold lands under fictitious names; no instance of the kind having ever been brought to the attention of the zillah Judge.

2. If so, when did that practice originate, and what were the circumstances that induced it?

Answered.

3. Are

The

3. Are there any advantages in the continuance of that practice, and if there be, what are those advantages?	The zillah Judge can perceive little advantage to be derived from such a practice, for if the attempt was made for any sinister purpose, it would be very soon discovered.
4. In case of its being determined to prevent the continuance of that practice, what provisions of law would most surely and conveniently, and with least risk of injustice to individuals, effect that object?	Forfeiture of the land when discovered to be held under a fictitious name, would most probably prevent the practice where it does exist.

Given under my hand and the seal of the Court, this 16th day of November A. D. 1837.

(L. S.) (signed) *F. Lascelles*, Judge.

In return to the above precept, directing the zillah Judge of Cuddapah to furnish information respecting the custom of holding lands under fictitious names, the zillah Judge begs leave to state, that in consequence of his having been but a short time in this district, he has not been able to obtain such full information on the subject as he wished.

The practice of holding lands under fictitious names in this district, is certainly, so far as the zillah Judge has been able to ascertain, carried to a great extent. It is, however, exceedingly difficult to obtain correct information on the point, as those persons who from their situations would be the most able to furnish the information, are the most interested in concealing the fact.

It does not appear, from the inquiries which I have made, that the practice existed to any considerable extent, if at all, previous to this district coming under the British Government. Landed property under fictitious names, appears to be held in this district principally by persons holding situations under the Government: although Regulation XXVII. of 1802 applies only to land sold at public sales for arrears of revenue, a great quantity of land is purchased by native revenue officers, and also by other public servants by private bargain, under fictitious names, or more properly speaking, in the names of other persons, near relatives of the actual purchasers. Persons holding public situations, particularly in the Revenue Department, have numerous opportunities of acquiring the best land on the most favourable terms; the reason of land being held in fictitious names under these circumstances, is sufficiently obvious.

Land property is sometimes purchased, and occasionally to a considerable extent, by private individuals in other names, chiefly to obviate its liability for the debts of the purchasers. It does not, however, appear that such purchases of land are common in this district.

There do not appear to the zillah Judge any advantages in the continuance of the practice; on the contrary, he apprehends that it is attended with great inconvenience, both in a public and private point of view; a discontinuance of the practice would be productive of great public good; all fictitious proprietors of land or other property are bad, and should be declared illegal.

The zillah Judge is not prepared to say what provisions of law would most effectually prevent the practice; no injustice would be suffered by individuals unless the law were to have a retrospective effect. To those persons at present holding lands under other names, a limited time might be allowed for registering them in their own names, subject, in case of non-compliance, to such penalty as the Legislature may declare them liable.

Given under my hand and the seal of the Court of Cuddapah, 17 November, A. D. 1837.

(L. S.) (signed) *J. Paternoster*, Judge.

In obedience to the within precept and extract from the proceedings of the Provincial Court of Appeal for the centre division, under date the 12th August last, annexing copy of a letter from the Register to the Court of Foujdarry Adawlut, dated 8th, with a copy of a communication from the Officiating Secretary to the Indian Law Commission on the subject of the expediency of rendering all lands liable to forfeiture which have been purchased under fictitious names

(B.) No. VI.
Respecting Lands held under Fictitious Names.

by any parties, whether native officers of Government or others, and requesting the sentiments of the several zillah and assistant Judges on the four points therein referred to,—the zillah Judge of Bellary has the honour to state, that he is not aware of the existence of the practice of holding landed property under fictitious names in the provinces under the jurisdiction of this zillah, and in the records of the office no instance can be found.

2. The provisions of Section 20, Regulation XXVI. A. D. 1802, and Regulation VI. A. D. 1832, gave rise to the practice here complained of in other zillahs; and while the restriction contained in those enactments is enforced, the practice will probably continue to be resorted to, and it never can be detected while the real owner and the person whose name is sued keep their own counsel, and continue on close and amicable terms with each other.

3. It can only be detected on the sudden rise of any quarrel in the presence of others, when the fictitious person might let out the secret; but if he benefits thereby from the real owner, it probably never would be revealed.

4. To obviate the evil consequences resulting therefrom, the Judge considers the restriction should be removed, and by the removal of the restriction, the lands would probably fetch a higher value.

5. To prevent the lands from being sold considerably less than their value, from any influence the native servants might exercise over the community, the measurement and value of the land might be first ascertained, and it should not be sold unless it fetched two-thirds of its value, and no private sale should be permitted, and no sale should take place without public proclamation of six weeks before it does take place.

Given under my hand and the seal of the Court, this 14th day of October, A. D. 1837.

(L. S.) (signed) *H. Bushby*, Judge.

According to the exigency of this precept, which accompanied an extract from the proceedings of the Provincial Court of Appeal from the centre division, under date 12th August 1837, together with a copy of a letter from the Register to the Court of Sudder Adawlut, dated 8th instant, and copy of a communication from the Officiating Secretary to the Indian Law Commissioners, directing the zillah Judge to forward his opinion on four points relative to the practice of holding lands in fictitious names; the zillah Judge has the honour to state, that he is not aware that it is the practice to hold lands under fictitious names in this zillah; on the contrary, he is of opinion that no such practice does exist, for in any dispute regarding landed property, the fact of the land being entered in the village and other accounts in the claimant's name, is always pleaded and adduced as proof of his right to the land. The zillah Judge can give no answer to the 2d, 3d, and 4th questions

Given under my hand and the seal of the Court at Chingleput, this 1st day of September, A. D. 1837.

(L. S.) (signed) *J. Horsely*, Judge.

1st. In making return to this precept, which accompanied an extract from the proceedings of the Provincial Court in the centre division, under date the 12th ultimo, on the subject of the expediency of rendering all lands liable to forfeiture purchased under fictitious names by any parties, whether native officers of Government or others, the acting assistant Judge of Chingleput has the honour to state, in reply to queries 1st and 2d, in a district where, with few exceptions, there exists but one description of title, viz. a pottah granted by the collector, each individual is of course anxious to have that document in his own name.

2d. Two classes of people will be exceptions to this rule, and by furnishing capital for the purchase or cultivation of land, for which they allow a pottah to be made in the name of another, may be said to hold land under fictitious names: 1st. Persons incapable of receiving a pottah; 2d. Persons who may have private reasons for wishing that the fact of their holding certain lands may not be known, sufficiently strong to induce them to run all the risk of loss and inconvenience consequent on their making use either of a fictitious name or that of another party; as far as my short experience enables me to form an opinion, I should say that neither practice was common, nor do I think

I think that any particular time or circumstance can be fixed upon as its commencement or cause.

3d. The advantages proposed by the individual who may resort to such an expedient of course vary considerably; in some cases they may attain their end, in others fail; but I should think no public or general advantage could possibly accrue from such a practice.

4th. The first class of persons mentioned above, consisting of public servants, &c. under certain circumstances, are already restrained by legal prohibitions.

5th. The second class, or those led to adopt the course by a supposition that it is their private interest to do so, might be effectually deterred by a legislative enactment, ordering the courts to look to the name in the puttah only, and to entertain no suits founded on private deeds or agreement, either executed prior to the procural of the original puttah, or subsequently, relative to the sale or transfer of such puttah lands, and directing that all such transfers should be public, by the vendor and vendee appearing before the tehsildar of the district, the vendee or transferee receiving in his presence from the puttahdar an agreement, stating that he consented to the making of the following year's puttah in his name; the tehsildar would note this in a book, and the puttah be made accordingly. Puttahdars might, under this system, sell lands they had previously mortgaged; but it is the duty of the vendee to ascertain this before he buys. This fraudulent practice, and that of mortgaging the same property twice, will never be put a stop to till it is made necessary for the vendor to certify, at the time of registering, that there are no mortgages on the property he is about to sell, or to state, if any exist, what they are, and to make the giving a false certificate a penal act, punishable by the criminal courts with fine and imprisonment.

Given under my hand and the seal of the Court at Cuddalore, this 29th day of September, in the year of our Lord 1837.

(signed) *C. R. Baynes,*
Acting Assistant Judge.

(True copies.)

(signed) *W. Douglas,* Register.

(No. 80.)

From *W. Harington,* Esq. Acting Second Judge, for Register, to the Register to the Court of Sudder Adawlut, Fort St. George.

Sir,

1st. I AM directed by the Provincial Court for the southern division, to acknowledge the receipt of your letter of the 8th August last, transmitting copy of a communication from the Officiating Secretary to the Indian Law Commission, on the subject of the expediency of rendering all lands liable to forfeiture which have been purchased under fictitious names by any parties, whether native officers of Government or others; and desiring that the court will submit their own sentiments, as well as those of the several zillah and assistant judges within their jurisdiction, on the four points proposed for consideration.

2d. In conformity with the above instructions, the sentiments of the several zillah and assistant judges in the division on the question were called for, copies of whose answers are herewith transmitted.

3d. The experience of the judges of this court leads them to concur in the unanimous opinion expressed by all the zillah and assistant judges of the division, that the practice of holding landed property under fictitious names is common throughout its jurisdiction.

4th. The court have no reason to suppose that the practice is of recent origin; they, on the contrary, believe it to have prevailed for many years.

5th. The court are of opinion, that although instances may occasionally occur of a purchaser desiring that his land may be held under the name of another

(B.) No. VI.
Respecting Lands held under Fictitious Names.

another person, in order that he may avoid being called before the revenue authorities at the time of the annual settlement, fraud is the secret motive by which it may with safety be assumed that parties to such fictitious transactions are in almost every case actuated.

6th. That a public servant purchasing landed property under a fictitious name can be influenced by any other motive but fraud, cannot for an instant be supposed; if not, why the concealment?

7th. The court are of opinion that no advantage whatever can arise out of the custom. It gives room to the practice of much fraud and deceit, and ought to be prevented.

8th. The court would suggest, as the most sure and convenient mode of putting a stop to the practice, that a general office of registry should be established in each zillah, that parties selling, mortgaging, or otherwise alienating their landed property, should be required to register their deeds; and that after the expiration of a certain time to be fixed, no deed for the alienation of land should be admitted by any court unless it was registered.

9th. With respect to public servants, the court would recommend that a law should pass, requiring them all, within a certain time, to appear and register all lands belonging to them; and that it should be enacted, that in the event of its being afterwards discovered that they possessed land, either in their own names or in the names of other persons, which they had not registered, they should be forthwith dismissed from their offices, and declared incapable of again serving the Government, besides their lands, so unregistered, being forfeit to the State.

10th. In order to prevent proprietors of land from being harassed by being called before the revenue authorities, the court are of opinion that proprietors should be empowered to name persons as managers of their property, and that having furnished them with instruments, to be drawn up on stamped paper, defining their powers, and having registered them in the cutcherry of the tehsildar of the talook, all business connected with the said property should be transacted with the agents instead of the actual proprietors.

I have, &c.

Trichinopoly, Register's Office,
28 February 1838.

(signed) *W. Harington*,
Acting Second Judge, for Register.

From *E. B. Glass*, Esq. Acting Judge, to the Register to the Southern Provincial Court of Appeal, Trichinopoly.

Sir,

With reference to your letter of the 26th ultimo, I have the honour to submit answers to the four points proposed by the Indian Law Commission, on the subject of parties purchasing lands under fictitious names, for the information of the judges.

Q. 1. Is the practice of holding landed property under fictitious names common in the provinces under the jurisdiction of your court?

A. This practice is very prevalent in this country, especially by public subordinate officers.

2. If so, when did the practice originate, and what were the circumstances that induced it?

This practice has obtained from time immemorial. The public servants form an idea that if lands were purchased in their own names, the legality of such acquirement would be doubted, they therefore purchase lands either in the names of their sons or nearest friends.

3. Are there any advantages in the continuance of the practice, and if there be, what are those advantages?

There do not appear to be any advantages in the continuance of the practice.

4. In

The

4. In case of it being determined to prevent the continuance of that practice, what provisions of law would most surely and conveniently, and with least risk of injustice to individuals, effect that object?

The surest, safest, and simplest means of having this point carried into effect, without the risk of individual injustice, would be for a public notice being given, through the collector of each district, to individuals of all classes under their jurisdiction, that no purchase of lands which was unregistered at the respective courts, or before the collectors, would be considered valid, if disputed. This mode of proceeding would give the officer before whom such registry is made, an opportunity of ascertaining the legality of the purchase of the land, as well as who the real purchaser is; at the same time it would be also very necessary that previous to such registry being made, a public notice be given through the collector, that any individual having a claim to such lands, should bring it to the notice of the officer of registry, within a month from the date of the notice.

I have, &c.

Madura Zillah Court,
20 February 1838.

(signed) *E. B. Glass,*
Acting Judge.

N.B.—This letter was returned to the Acting Judge because it was not dated, and was returned to the court on the 27th February.

From *H. D. Phillips,* Esq. Assistant Judge, to the Register to the Provincial Court, Trichinopoly.

Sir,

I HAVE the honour to reply to your communication of the 14th August last, on the subject of rendering all lands liable to forfeiture which have been purchased under fictitious names, either by native officers of Government or others.

2d. The practice of holding landed property under fictitious names is very generally prevalent in the province under the jurisdiction of this court.

3d. The origin of the system dates from the assumption of the country by the present government. It is followed by persons of every class, as much as to avoid the numerous inconveniences to which the individual is subjected whose name is registered as proprietor (such as attending the jummabundy cutcherry to receive puttahs, and appearing in the court in his capacity of landholder, to give evidence regarding village and other disputes), as to evade payment of revenue and other dues, when process is issued for their recovery.

4th. The continuance of the practice does not appear to me likely to be attended with advantages of any kind.

5th. It appears to me that the enactment of a law prohibiting individuals in nowise connected with the Government from purchasing landed property in the name they may deem most expedient, would be an infringement of personal rights, unless the arrangement be proved to have been made with fraudulent intent; I am, therefore, unable to suggest any arrangement on the subject, which in its operation would not be likely to be attended with injustice to individuals.

I have, &c.

Tinnevelly Auxiliary Court,
1 February 1838.

(signed) *H. D. Phillips,*
Assistant Judge.

(B.) No. VI.
Respecting Lands held under Fictitious Names.

From *F. M. Lewin*, Esq. Judge, to the Register to the Provincial Court, Southern Division.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 14th instant, together with the letter of the Indian Law Commissioners of 30th June last, in which they wish to have the opinion of the judges on four points, and I beg to submit a report upon them accodringly.

2. 1st Point. It is very common for parties to hold lands under fictitious names in this zillah; that is to say, in the names of relations and agents or managers.

3. 2d. This practice has prevailed from time immemorial, and the circumstances that led to it, are, that it saves the principal parties from much trouble, and from being sent for to the talook cutcherry constantly, and to the collector's cutcherry; and it originates in some measure from the natural habitual unwillingness of natives to conclude purchases and important transactions in their own names all over India, and also from an indefinite idea that there will be room to get out of scrapes by putting in somebody else's name in these bargains.

4. 3d. There are no advantages to the Government in this practice certainly; quite the contrary; it leads to concealment and under-hand practices, which are objectionable, and often create a great deal of trouble. To the people themselves who practise it, there are some advantages, such as are enumerated in the second point above, but many disadvantages also, from the fictitious person put forward assuming the character of the real proprietor, and disputing his master's authority, and dragging him into the courts, and before the collector, &c. &c.

5. 4th. The best way to prevent this practice is to have a registry in the collector's office, in which all sales and transfers shall be entered in the real names of the principals contracting after the talook tehsildars, shall have made a report of the desire of the parties to conclude a bargain. Then a notice should be stuck up at the talook cutcherry and at the collector's registry office, stating that the entry is going to be made, and anybody may object for one month to its validity.

6. This is partly the practice in Tanjore Proper, where the sales and transfers of land are so frequent, that without it, there would be no check to all kinds of frauds and confusion, as to who were the real proprietors, &c. &c.; but then this wise practice is that of the collector's establishing, and is not enforced beyond any Regulation of Government, and besides, it does not provide for the real names of the principals being entered as a *sine qua non.*

7. No contract of the above kind should be held binding in any court of justice, but such as had been concluded in the above manner, and any fictitious names being entered should render the bargain null and void, and this would prevent any tricks on either side.

8. There are a great many things to be said on this subject as regards the purchase of lands by native servants of the Government. In the first place, as things go on now, we never know anything of the private affairs of the native servants under control, whereas it is very important that we should know a great deal. There are so many changes take place in the appointments of the English gentlemen in the provinces, that they must be said, generally, to know nothing of the private affairs of the native servants, particularly in the Judicial Department.

9. The consequence of this is, in this zillah at all events, that every servant holding any influential post makes money as fast as he can, and amasses enough to build a good house and buy lands with. Now if the purchase of these lands was publicly proclaimed in the native servant's own name at the time, there would be room to ask where the money was got to make the purchase with, and whether it was saved out of the monthly pay, or how.

10. There are eight moonsiffs, for instance, in this zillah, all landholders more or less, and I cannot ascertain, except with their own consent, the amount of any one of their landed estates, much less where they procured the money to acquire them.

11. The same remark applies to the zillah court servants, one of whom, viz. the native register, lately dismissed for gross bribery and corruption, has purchased

(B.) No. VI. Respecting Lands held under Fictitious Names.

purchased an estate very recently, and I cannot ascertain any particulars regarding it without his consent, which of course he withholds.

12. The same exactly of the late nazir; and the same of the late moonsiff of Combaconum, all convicted of bribery.

13. The same remarks apply to the revenue establishment of the collectors, I imagine, particularly in this zillah, where the acquisition of land is a primary object with everybody who has money at command.

14. To make a law that no purchase should be considered valid in courts of law, unless registered *bonâ fide* as above described, would put a stop to a great deal of infamous litigation in Zemindary and Moottah districts, and on this subject I addressed the superior authorities from Salem in 1829.

15. In that zillah, although the moottadars are by Regulation XXVI. of 1802, obliged to register any transfers or sales in the collector's cutcherry, or else they are held liable for the revenue, yet the judges of the Sudder Adawlut have ruled, 17th September 1832, that this registry is only to secure the revenue, and is not to prevent private sales and transfers.

16. The consequence of this is, that there is a great deal of litigation in that zillah, founded on false documents and evidence, which is highly perplexing to the judicial authorities, which would be prevented by some law making it imperative to register all purchases and transfers, without which such would not be held binding in courts of law; but by rule of the Sudder Udawlut, the courts derive no guide or good at all from the collector's registry.

17. I see no objection to some such law as is proposed by the Indian Law Commissioners; on the contrary, I am of opinion that it would do a great deal of good, and prevent an immense deal of fraudulent litigation, besides affording some insight into the affairs of native servants of all classes in acquisition of lands, &c.

I have, &c.

(signed) *F. M. Lewin*, Judge.

Combaconum,
21 August 1837.

From *E. Bannerman*, Esq. Judge of Salem, to the Register of the Court of Appeal for the Southern Division, Trichinopoly.

Sir,

I HAVE the honour to submit my reply on the four points referred for report in your letter of the 14th August, regarding the practice of holding lands in feigned names.

2. In regard to the first point, I have the honour to state, that I cannot ascertain that the practice is very common, but from the strong motives which exist for such a practice, I think and I am told it prevails in many cases which it is impossible to ascertain.

3. In regard to the second point, I think the practice must have prevailed from the remotest period: of the circumstances which must have induced it, one is, a rule that lands held by Bramins or Mussulmans, are to be taxed 20 per cent. less than those held by others, owing to which, many lands must be fictitiously held in the names of the former for the sake of the exemption; and at the same time, I have not ascertained any individual cases of this kind, though many such, disguised in other shapes, must have come before me. Another motive for holding land in feigned names arises from the inconvenience the proprietor must undergo, if liable to be continually called up before zemindars or revenue subordinates regarding such, particularly if he live far from his land, or if he be a public servant, or person of respectability, who would not like to be continually called before a (perhaps overbearing) revenue subordinate. Besides the above cases, moonsiffs, who are agricultural speculators, public servants, who illicitly buy land at revenue sales, persons who wish to evade decretal sales, and persons who wish to simulate poverty to bar revenue demands, or to plead as paupers, hold their lands in feigned names.

4. In respect to the third point, I am not aware of any advantages, either public or private, but such as are indicated in the last answer, and it seems to me that all of the above advantages which are legitimate, might be secured by an order or law enjoining revenue functionaries and zemindars to permit the

(B.) No. VI.
Respecting Lands held under Fictitious Names.

proprietors and tenants of lands to transact the affairs of such land with them through their duly appointed and registered proxies.

5. In respect to the fourth point, it seems to me that a law of forfeiture might always be evaded by the real proprietor's actually transferring the land, and at the same time securing for himself such terms of lease as would prevent his losing, though he would thus avert forfeiture; for although such transaction might often be suspected, it could seldom, if ever, be effectually proved. I altogether do not think that the practice can be effectually restrained by a legislative enactment, or otherwise than by removing the motives from which it rises. In regard to the first class of motives, namely, that arising from the inconvenience of attending zemindars and revenue subordinates, I have ventured to suggest the means of removing that motive; but in regard to the motive arising from the odious distinction of tax still maintained in favour of Bramins and Mussulmans, it seems to me that no law would set it to rights, and perhaps the collusion it gives rise to, is the only mode in which the evil can be counteracted.

6. Still the partly contemplated law of forfeiture, while it did no ill in any case, if accompanied by the permission of proxy I have above suggested, would tend to prevent collusive transfers in many cases for mere temporary purposes (such as the evading of a decretal order), when the motive for collusion was not extremely strong; for the mutual trust which the collusion would, under a law of forfeiture, involve, is such as would not be entered into on a light consideration. I, however, am altogether humbly of opinion, that as the law of forfeiture would be in such direct conflict with what in many cases must be an almost enviable practice, something more modified and indirect in its operation might be adopted, and, agreeably to this view, I venture to suggest a law declaring, that after a year from the date of promulgation, no claim of land, not duly registered, will be recognised in bar to attachment by a decretal order; it, however, being understood, that mere registry will not be received as conclusive evidence in favour of a claim, as this would lead to continual mispersonations of persons whom it was intended to defraud; whereas, if merely non-registration be looked to as the ground of decision, no motive for mispersonation would exist, and local functionaries paid by fees on registration, and on permission to inspect their registries, would take care to maintain the practice in their localities.

I have, &c.

Salem Zillah Court,
29 August 1837.

(signed) *E. Bannerman*, Judge.

From *W. A. Forsyth*, Esq. Acting Assistant Judge, to the Register to the Provincial Court of Appeal, Southern Division, Trichinopoly.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 14th ultimo, as well as a copy of a letter from the Officiating Secretary to the Indian Law Commission to the Court of Foujdarry Adawlut, bearing date the 30th June last, on the subject of the expediency of rendering all lands liable to forfeiture which have been purchased under fictitious names by any parties, whether native officers of Government or others; and directing me to submit my opinion on the four points therein proposed for consideration.

Q. 1st. Is the practice of holding landed property under fictitious names common in the provinces under the jurisdiction of your court?

A. The practice obtains in this and every district I have been employed in to a very great extent, particularly among the native officers of Government of every grade, both in the Revenue and Judicial Departments.

2d. If so, when did that practice originate, and what were the circumstances that induced it?

The practice, without doubt, originated long before the country was subjected to British rule, and there can be no question that it was chiefly the insecurity of property under the native government which

(B.) No. VI.
Respecting Lands held under Fictitious Names.

which induced it; since the enactment of the Regulations promulgated by our Government, this cause has not existed, but it is to be observed, that though the natives no longer live under a despotic government, the very fact of their rights, privileges, and immunities being respected, makes the attainment of wealth an object of greater ambition to every class of the community, who now resort to their old expedients as the best means, not as formerly, of deceiving the world as to the value and extent of their property, but of pursuing that system of fraud and duplicity which appears to be their peculiar characteristic from their earliest infancy. It is a notorious fact, that two-thirds of the native officers of Government are possessed of very little, if any property when they enter the service, and it will be found on inquiry, that a very great proportion of what they hold in land subsequent to the dates of their respective appointments is not only not registered in their own names, but it has come into their possession, directly or indirectly, by their taking undue advantages of their situations as public officers. This I am fully prepared to prove if called upon, and satisfactorily explain why the servants of Government resort to this practice. It appears needless to enumerate the frauds which are facilitated by this practice when resorted to by private individuals, who, though frequently the victims of their own want of principle, are not likely to renounce it till honesty among themselves, and probity among the native servants of Government, are held in greater esteem.

3d. Are there any advantages in the continuance of that practice, and if there be, what are those advantages?

I am aware of none, and all those individuals, both European and native, with whom I have conversed on the subject, condemn the practice.

4th. In case of it being determined to prevent the continuance of that practice, what provisions of law would most surely and conveniently, and with least risk of injustice to individuals, effect that object?

The question requires much deliberation as respects others than the servants of Government. The only effectual way of putting down the practice among the native officers of Government would be, to declare all lands held secretly or under feigned names forfeited, and I conceive that no doubt can exist of the necessity and expediency of such a measure, or of the advantages which must be the result of such an enactment. With respect to those unconnected with Government, it would probably be expedient to declare all lands held under fictitious names liable to forfeiture, but the practice of holding landed property in other than their own names, merely illegal, and consequently not recoverable in the courts of civil judicature.

I have, &c.

Coimbatore Auxiliary Court, 30 September 1837.

(signed) *W. A. Forsyth,*
Acting Assistant Judge.

(True copies.)

(signed) *W. Douglas,*
Register.

From *W. O. Shakespear,* Esq. First Judge, Western Provinces, to the Register to the Court of Sudder Adawlut, Fort St. George.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 8th of August last, and as therein directed, herewith transmit copy of the several communications, noted as below *, together with my own sentiments, touching the

* Letter from the Judge of Canara of 18th September 1837.
Letter from the Acting Assistant Judge of Malabar of 26th September 1837.
Letter from the Acting Judge of Malabar of 20th October 1837.

(B.) No. VI.
Respecting Lands held under Fictitious Names.

the expediency of rendering all lands liable to forfeiture which have been purchased under fictitious names.

2. With regard to the 1st and 2d questions propounded, the practice appears to exist to an almost incredible extent throughout the provinces of Malabar and Canara; at the same time that it seems totally impossible to obtain any clue calculated to form a most distant idea as to the exact time of its origin, neither is it easy to assign any cause for the lengths to which it is carried, attributable, as it may be viewed, to various causes; for instance, caste, laws of succession peculiar to the provinces, a wish which they may have to conceal their acquired wealth, corrupt motives to guard against attachment in case of a reverse of fortune, and though last not least, superstitious ideas imbibed, which lead to the purchase of land in the name of some particular deity or Sisters of Spring, if, after consulting astrologers, the omen be found favourable, but who, nevertheless, possesses no exclusive right whatever at any future period to dispose of the same; with many others that might be enumerated.

3. Touching the 3d, I am not aware of a single advantage derivable from the continuance of a practice which has tended so much to impede the speedy administration of civil justice, and must, so long as it exists, leave a door open for obstructing the operations of our courts, both as to determining proprietary right in the first stage, as also subsequently, how far such lands can be considered available in execution of decrees passed, in fact, against the actual purchaser.

4. With reference to the 4th and last, the opening of a general registry for the insertion of the name of the actual proprietor retrospectively and in futurity, under penalty of forfeiture by a special enactment, seems best calculated to protect the rights of all fair dealing individuals; and being a measure which the Government have a right to demand, can scarcely, I should imagine, when the object becomes generally known, be reasonably considered objectionable by any class, let their caste, prevailing laws, customs, and situations in life be whatever they may.

5. I further beg leave to add, that the foregoing letter of the 8th August, together with its accompaniments, were sent to the 2d and 3d judges, absent at Mangalore, who, I presume, will submit their opinions direct, and that the apparent delay which has occurred has been waiting a reply from the acting judge of Malabar, whose sentiments will be forwarded so soon as received.

I have, &c.

Provincial Court, Western Provinces,
25 October 1837.

(signed) *W. O. Shakespear,*
First Judge.

From *G. Bird,* Esq. Judge, Canara, to the Register to the Provincial Court of Appeal, Western Division.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 14th ultimo, transmitting copy of a communication from the Officiating Secretary to the Law Commission of the 30th June last, on the subject of holding lands under fictitious names, and in conformity with the directions contained therein, submit such information on the four points proposed for consideration as I am enabled to afford.

Q. 1st. Is the practice of holding landed property under fictitious names common in the provinces under the jurisdiction of your court?

A. It exists to a considerable degree in the province of Canara.

2d. When did that practice originate, and what were the circumstances that induced it?

It would be difficult to determine at what precise period this practice originated, but all agree that it must have been adopted in very early years, and have increased to the extent now prevalent, and from the inquiries I have made, I should say that it is questionable how far its origin can be said to have altogether proceeded from deceptive motives,

motives, but may have partly been adopted from the peculiar opinions and customs of the Hindoo and Mahomedan character, together with the laws of inheritance existing in the province of Canara, and which may be understood by specifying such as these:

A Hindoo being about to enter into speculations or purchase land, would have the nativity of his family calculated, and if the star of any particular member prevailed, the land would be purchased, or the speculation carried on in that individual's name.

Members of an individual family generally appoint one person as the manager or eyaman, and when land is purchased, it is in that individual's name.

Should a member of an undivided family acquire money of his own, and with such money purchase land, to prevent its being claimed by the members of his family, he would purchase the estate in the name of another.

If a man had no influence in his village to secure several privileges under the former government, to prevent interference on the part of a neighbour, or insure regular payment from a tenant, he would have purchased land in the name of a man of influence in his village.

The peculiar laws relative to the succession of property in this district amongst the Hindoos termed ali santan, and amongst the Mahomedan called heumoolla, may also be assigned as a cause, for by the law of the former, the persons succeeding to a man's property are his brothers, sisters, and the children of the latter, and his own children cannot inherit unless under an authenticated deed of gift termed "aneejut;" hence a man living under these laws and purchasing land, might, without any wrong motive, be very likely to purchase it in the name of his brother, sister, or immediate successor.

Again, under the rules of "heumoolla," all males are excluded from inheritance, the heirs to the property being the daughters with sister and their female offspring; this often might, and does affect the purchase of property, and the name under which it is purchased. To these may be added the common and deceptive motive of a man being in debt, to prevent property from being available for his debts, purchases land under a fictitious name.

Of a widow, to secure food and maintenance to which she would not be entitled if possessing property; land would be purchased during the lifetime of her husband in the name of another; with a variety of others.

3. Are there any advantages in the continuance of that practice, and if there be, what are those advantages?

I know of know advantage in the continuance of the practice; on the contrary, the difficulty the courts experience in ascertaining the proprietary right to land would be considerably lessened were it put a stop to; but it appears to me questionable whether in this province it could be conveniently done.

4. In case of its being determined to prevent the continuance of that practice, what provisions of law would most surely, and with least risk of injustice to individuals, effect that object?

This is naturally the difficult point, and I am of opinion that no general enactment can be passed prohibiting the continuance of the practice; but when a fraudulent and deceptive motive is proved to exist, that the lands should be liable to forfeiture, and a law enacted to render the parties amenable to the criminal court.

I have, &c.
(signed) *G. Bird*, Judge.

Zillah Court, Canara,
18 September 1837.

(B.) No. VI.
Respecting Lands held under Fictitious Names.

Auxiliary Court, Zillah Malabar.

From *G. S. Greenway*, Esq. Acting Assistant Judge, Tellicherry, to the Register to the Provincial Court of Appeal, Western Division.

Sir,

I HAVE the honour to forward my replies to the four questions transmitted with your letter of the 14th August last.

I have, &c.

(signed) *G. S. Greenway*,
Acting Assistant Judge.

Tellicherry,
26 September 1837.

1st. Is the practice of holding landed property under fictitious names common in the provinces under the jurisdiction of your court?

This practice is universal throughout Malabar.

2d. If so, when did that practice originate, and what were the circumstances that induced it?

By the law of North Malabar the succession to landed property is in the female branch, not in the male, and it may be that the practice of purchasing land under fictitious titles originated in this law; another inducing cause was the rapacity of men in power. The practice was universal long prior to the establishment of our courts on this coast, and has been continued by the native public servants from the same motive that probably gave rise to it, viz. the desire of concealing the amount of their property, however acquired.

3d. Are there any advantages in the continuance of that practice, and, if there be, what are those advantages?

There is no advantage whatever in the continuance of this practice, and the evils attendant upon it are most serious.

4th. In case of its being determined to prevent the continuance of that practice, what provisions of law would most surely and conveniently, and with least risk of injustice to individuals, effect that object?

A total want of upright principle is so universal throughout Malabar, that any mild provisions of law would prove wholly inoperative. I would suggest that it be enacted, that all transfers of land, whether by sale or mortgage, or in what way soever, shall be registered before some revenue officer; and that all present holders of property shall be required to register their claims in the same way; and that, unless so registered, no claim shall be considered good, or admitted in any court of law; and that, in all cases an extract from the register, attested by the revenue officer whose duty it may be, shall be considered sufficient proof that the provisions of the law have been complied with. There might, with good effect, be an additional clause, enacting, that where native public servants, revenue or judicial, shall be proved to have acquired landed property secretly, or to hold it under feigned names, such landed property so acquired, or so held, shall be forfeited to Government. An enactment of this description would, in all probability, have considerable effect; and if at all successful, would prove most beneficial in greatly diminishing litigation, and in almost entirely putting a stop to the vexatious delays at present thrown in the way of executing judgment in all civil cases.

(signed) *G. S. Greenway*,
Acting Assistant Judge.

(B.) No. VI.
Respecting Lands held under Fictitious Names.

Zillah Malabar.

From *J. C. Scott*, Esq. Acting Judge, Calicut, to the Register to the Provincial Court, Western Division.

Sir,

WITH reference to the Provincial Court's memorandum of the 11th instant, calling upon the acting Judge for his answer to that court's letter of the 14th August last, the acting Judge begs to apologise for the delay, and to state that press of business of this court has as yet prevented him giving that consideration to the points therewith forwarded, so as to enable him to form an opinion thereon, but will do it as soon as possible.

(signed) *J. C. Scott*, Acting Judge.

Calicut, 20 October 1837.

From *W. O. Shakespear*, Esq. First Judge, Presidency, Western Division, to the Register to the Court of Sudder Adawlut, Fort St. George.

Sir,

WITH reference to my letter of the 25th ultimo, I have the honour to forward copy of a communication this day received from the acting Judge of Malabar, submitting his sentiments on the expediency of rendering all lands liable to forfeiture which have been purchased under fictitious names.

I have, &c.

Provincial Court, Western Division, 4 November 1837.

(signed) *W. O. Shakespear*, First Judge, Presidency.

Zillah Malabar.

From *J. C. Scott*, Esq. Acting Judge, Calicut, to the Register to the Provincial Court, Western Division.

Sir,

WITH reference to your letter of the 14th August last, forwarding, in conformity to the instructions received from the Sudder Udawlut, copy of a communication from the Officiating Secretary to the Indian Law Commission to that court, under date the 30th June last, on the subject of the expediency of rendering all lands liable to forfeiture which have been purchased under fictitious names by any parties, whether native officers of Government or others; and calling upon me to submit my sentiments on the four points proposed for consideration, I have the honour now to forward the same.

1st. Is the practice of holding landed property under fictitious names common in the provinces under the jurisdiction of your court?

It is very common, and most purchases are made in the name of a third person.

2d. If so, when did that practice originate, and what were the circumstances that induced it?

The practice seems to be coeval with the sale of landed property. The peculiar tenure of landed property in the district, and the ceremony that had, and has to be gone through, to make the sale of land valid, rendered it often necessary. For example: the seller has to give water to the purchaser, and one of high caste cannot well receive water from another of inferior caste; therefore, the deed is sometimes executed in the name of a third person. Rajas and Bramins get the deeds in the names of their agents or pagadas; and a younger branch of a family, in purchasing land, often gets the deeds in the names of the elder branches, as a mark of respect. Persons residing at a distance from the land they may wish to purchase, also get it bought in an agent's name on the spot, who can receive the water, &c. from the seller.

3d. Are there any advantages in the continuance of that practice, and if there be, what are those advantages?

It being an ancient custom of the country, is perhaps, as much as can be said in its favour.

(B.) No. VI.
Respecting Lands *held under Fictitious Names.*

4th. In case of its being determined *to prevent the continuance of that practice, what provisions of law would most surely and conveniently, and with least risk of injustice to individuals, effect that object?*

As the sale and transfer of landed property in a third person's name is no doubt often done with a fraudulent intent, lands thus transferred might be beneficially made subject to forfeiture; but to prohibit altogether the continuance of an ancient custom, to which the people are much wedded, would be considered an oppressive and arbitrary enactment. The provisions of Regulation XVII. of 1802, with certain modifications, might greatly prevent fraudulent sales, and it would be a less hardship to compel the people to register their deeds of sale and transfer, than to make all lands disposed of in a third person's or fictitious name liable to forfeiture, particularly if the fee for registering was lessened, or done away with altogether; more offices for such registry would be required in different parts of the district to prevent inconvenience.

(signed) *J. C. Scott,*
Acting Judge.

Callicut,
2 November 1837.

From *W. B. Anderson*, Esq. Third Judge, Provincial Court, Western Division, to the Register to the Court of Sudder Adawlut, Fort St. George.

Sir,

I AM directed to forward the opinions of the second and third judges of this court on the four points proposed for consideration in the letter from the Officiating Secretary to the Indian Law Commission, dated the 30th of June 1837 (on the subject of the expediency of rendering all lands liable to forfeiture which have been purchased under fictitious names), as requested in your letter of the 30th March last.

I have, &c.
(signed) *W. B. Anderson,*
Third Judge, for Register.

Provincial Court, Western Division,
10 May 1838.

1st. Is the practice of holding landed property under fictitious names common in the provinces under the jurisdiction of your court?

I believe the practice is common in the western division of holding landed property in the names of persons other than the real owners.

2d. If so, when did that practice originate, and what were the circumstances that induced it?

So far as I can learn, the practice had existed from a period so remote that its origin cannot be traced; that probably some at least of the same causes gave rise to it that are supposed to induce to its continuance; such, for instance, as a desire to settle propert yon a particular favourite or object of affection, or to prevent its dissipation by a spendthrift heir. It is, doubtless, often practised by dishonest debtors, with a view to secure their lands from being taken in execution by their creditors, and often also by persons in the service of Government, from an aversion to their names appearing as purchasers of land.

3d. Are there any advantages in the continuance of that practice, and if there be, what are those advantages?

I cannot understand that there are any advantages attending the practice, save those which may result to individuals under such circumstances as are indicated in the above answer.

4th. In case of its being determined to prevent the continuance of that practice, what provisions of law would most

I am inclined to the opinion that no provisions of law would put a stop to the practice effectually without risk of injustice,

most surely and conveniently, and with least risk of injustice to individuals, effect that object?

injustice, or at least hardship, to individuals.

(signed) *W. B. Anderson,*
Third Judge.

9 May 1838.

1st. Is the practice of holding landed property under fictitious names common in the provinces under the jurisdiction of your court?

It is a common practice in this division to hold lands in the names of others.

2d. If so, when did that practice originate, and what were the circumstances that induced it?

I see no possibility of ascertaining when it originated, or the circumstances which first induced it. Some of the motives for it at present appear to be: 1. Superstitious ideas as to the better luck of individuals of a family, whose names are consequently set forth as purchasers in the deeds of sale; 2. To guard against claims under the ordinary laws of inheritance which may be raised as to titles of acquisition, independent of the use of family property, when division has not taken place; 3. To provide for one's offspring in families in which succession by nepotism prevails, and that offspring might consequently be left without provision; 4. To prevent inconvenience to parties purchasing who may be unable to attend and go through the forms of sale observed in Malabar, and to make purchases for minors; 5. To defeat creditors; and 6. With regard to public servants, to conceal their acquisition of property from their superiors.

3d. Are there any advantages in the continuance of that practice, and if there be, what are those advantages?

The answer shows that individuals have advantages.

4th. In case of it being determined to prevent the continuance of that practice, what provisions of law would most surely and conveniently, and with least risk of injustice to individuals, effect that object?

I cannot see how it is to be prevented, except by a law requiring registry of all purchases. The person in whose name the land is purchased can now reap no advantage from a dispute with the actual purchaser, who might destroy the deed, and therewith his ground of claim; but the public record would be valid proof in favour of him whose name may be used, and would consequently render the interest of the actual purchaser uncertain, and liable to be destroyed by a quarrel. I, however, have great doubt as to the feasibility of a general registry, which might be relied on for genuine proof of right, while frauds are so boldly and frequently practised.

(signed) *J. Vaughan,* Second Judge.

10 May 1838.

(True copies.)
(signed) *W. Douglas,* Register.

(No. 2015 of 1838.)

From *J. W. Legeyt,* Esq. Register, Bombay Sudder Dewanny Adawlut, to the Secretary to the Indian Law Commission, Calcutta.

Sir,

In forwarding the accompanying reply to Mr. Officiating Secretary Grant's letter of the 30th June 1837, signed by the Assistant Register, Mr. Woodcock, I beg to apologise for the additional delay which has occurred in its transmission, and which has been occasioned by the frequent changes of late in this office, and the unfortunate loss of Mr. Greenhill's minute alluded to in Mr. Woodcock's letter.

Legis. Cons. 23 Nov. 1840. No. 17.

I have, &c.
(signed) *J. W. Legeyt,*
Register.

Bombay Sudder Dewanny Adawlut,
31 December 1838.

(B.) No. VI.
Respecting Lands held under Fictitious Names.

(No. 541 of 1838.)

From *J. W. Woodcock*, Esq. Register, Bombay Sudder Foujdarry Adawlut, to *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission, Calcutta.

Sir,

I AM directed by the judges of the Sudder Adawlut to acknowledge the receipt of Mr. Officiating Secretary Grant's letter, No. 31, dated the 30th of June 1837.

2d. In reply to the first of the four queries submitted by the Indian Law Commission, the judges direct me to state that the local authorities report the practice of holding lands under fictitious titles as prevailing very generally.

3d. In reply to the second query, I am instructed to observe, that the above practice would appear to be of long standing, and antecedent to the introduction of the British supremacy. Under the native dynasty, it arose from a fear of being considered too wealthy, and hence being a marked object to be plundered, more especially by the officers of government; under the British rule, the same course of proceeding has been engendered in a great measure by a desire to avoid being made responsible in property for judgments passed by judicial tribunals, and to ensure the benefits accruing to the poorer cultivators (who in general are their partners) from remissions on account of bad seasons, want of means, or other causes of inability to liquidate the public rent or revenue. Superstition is occasionally alleged as a ground for holding lands in another's name; and the public servants are supposed to resort to this expedient to conceal the extent of their gains. Lastly, it is considered a means of preventing sharers in a family estate from participating in what would otherwise belong to them.

4th. There seems no difference of opinion in respect to the third query; all agree that no advantage can accrue from a practice which, from its secrecy, almost implies fraud; hence it should be disallowed, which is partly the purport of the fourth query. The judges are of opinion that any such tenure should not be recognised as legal; they would give due warning before any law was brought into operation, that existing defects may be remedied, and where fraud in any shape is established, they would punish the parties by fine, commutable to imprisonment, and would declare the land liable to forfeiture: they would also insist that the names of all shareholders in lands be entered, with their respective shares, in the village or other public accounts.

5th. As the fourth puisne judge differs in opinion from the majority of the court, he has instructed me to enclose his Minute.

6th. The judges request me to offer their apologies for the delay which has occurred in answering the reference to them, which has not originated with them.

I have, &c.

Bombay Sudder Foujdarry Adawlut,
30 April 1838.

(signed) *J. W. Woodcock*,
Register.

(B.) No. VI.
Respecting Lands held under Fictitious Names.

Legis. Cons. 23 Nov. 1840. No. 18.

Miscellaneous Department.
Present: J. Pattle and C. Tucker, Esqrs.

(No. 140.)

From *E. Currie*, Esq. Secretary Sudder Board of Revenue, to the Secretary of the Indian Law Commission, Calcutta.

Sir,

THE Sudder Board of Revenue having considered it expedient, before replying to your predecessor's letter, No. 32, of the 30th June last, to obtain the opinions of the officers under their control on the subject of persons holding or purchasing landed property under fictitious names, circulated the questions contained in your letter above referred to, to their subordinates, and called upon them to submit their sentiments. This course of procedure has necessarily occupied much time, and has occasioned the delay in replying to your communication.

2. I am now directed to state the substance of the information and opinions received from the local officers, together with the sentiments of the Board, and to request that you will lay the same before the Commissioners:—

1st. The practice of benamee, or fictitious purchases, has been common, from time immemorial, in all the districts under the control of this Board, in which a proprietary right in the soil is recognised, except in Cuttack, where instances of its occurrence are comparatively rare.

2dly. It obtained before the acquisition of the country by the British, and had its origin probably in the fear which men naturally entertain of appearing to possess property in times when the powerful knew no restraint but their own wills, and the weak had no protection from law. It has continued under our sway, partly from affording to the dishonest the means of evading the payment of their debts, whether to the state or to individuals, partly from the laws in force disqualifying certain classes of public servants from holding or purchasing lands in the districts where they are employed, and partly from the wish to evade the responsibility attaching to landholders in matters of police.

3dly. No public advantage whatever can result from the practice, but, on the contrary, much evil and inconvenience.

4thly. The suggestions made by the several local officers, for the removal of the admitted evil consequences of the practice, are various, many advocating an absolute confiscation of the property, and some recommending fine to the extent of one year's revenue. A few are of opinion that the strict enforcement of Regulation VIII. of 1800 might be sufficient, while others suggest that no plea or action of any kind should be maintainable, if founded upon a benamee or fictitious purchase.

3. The Board concur in the foregoing opinions as to the prevalence, the causes and the effects of the practice; and as they feel assured that it is never resorted to but for dishonest purposes, they deem it imperatively necessary that the law should provide for its effectual suppression.

4. In the draft of a proposed Act for regulating the sales of lands for arrears of revenue (now under the consideration of Government), it is provided that no summary suit for rent shall be entertained at the instance of a proprietor who may not have recorded his name in the collector's register.

5. In addition to this, the Board would recommend that it be enacted that no suit for real property shall be cognizable by any of the regular civil courts of justice if the cause of action be fictitious or benamee purchase, or title acquired by such means; and that it shall be imperative on the judges of those courts to dismiss all suits instituted on such grounds, and that against such decision no appeal shall lie or be admitted, save and except on the ground of irrelevancy to the Regulations, when an appeal shall be allowed in common with other suits.

I have, &c.

Sudder Board of Fort William,
5 June 1838.

(signed) *E. Currie*,
Secretary.

(B.) No. VI.
Respecting Lands held under Fictitious Names.

Legis. Cons. 23 Nov. 1840. No. 19.

(No. 1531.)

From *T. T. Metcalfe*, Esq. Commissioner, Dehlee, to *H. B. Harington*, Esq. Register to the Nizamut Adawlut, N. W. P. Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 783, under date the 21st ult., and its enclosure, from the Secretary to the Indian Law Commissioners, dated the 20th of June last.

The object of these communications is stated to be, to elicit some measure which shall prevent the subordinate judicial officers and others from acquiring landed property secretly, and holding it under feigned names, the Government deeming such practice productive of inconvenience.

I beg to subjoin answers to the queries propounded.

Answers to queries 1st, 2d, and 3d :—I cannot from personal knowledge state that the practice does or has ever existed; but I see no objection to a law to prevent its occurrence; on the contrary, I deem an Act of the Legislature for this purpose would be very salutary in preventing a pernicious practice for the future, and bringing to light any instances in which it may have existed heretofore.

Answer to query 4th :—The most sure, the most convenient, and, at the same time, the most just provision of law to prevent the practice would, in my opinion, be an act of Government, rendering all landed property which shall be proved in a court of law to have been acquired and held under a fictitious name, after a date to be prescribed, liable to forfeiture, and rendering all landed property now held in a feigned name, upon similar proof, also liable to forfeiture if not duly registered within one year after the promulgation of the Act, in a book to be kept for the purpose in the office of every judge or collector of land revenue.

I have, &c.

Dehlee Commissioner's Office,
17 August 1837.

(signed) *T. T. Metcalfe*,
Commissioner.

(No. 220.)

From *C. Lindsay*, Esq. Officiating Judge, Dehlee, to *H. B. Harington*, Esq., Register Sudder Dewanny Adawlut, N. W. P. Allahabad.

Sir,

WITH reference to your circular letter, No. 783, dated the 21st July last, with copy of one from the Law Commissioners, No. 29, dated the 30th June last, I have the honour to state that the practice of holding landed property under fictitious names is almost wholly unknown in the Dehlee territory; I conceive, therefore, that any further observations from me on this subject are unnecessary.

I have, &c.

Dehlee Territory, Judge's Office,
25 September 1837.

(signed) *C. Lindsay*,
Officiating Judge.

(No. 138.)

From *A. Fraser*, Esq. Magistrate, Paneeput, to *H. B. Harington*, Esq. Register to the Sudder Dewanny Adawlut, N. W. P. Allahabad.

Sir,

I HAVE the honour to acknowledge your circular, No. 783, of the 21st ultimo, with enclosure.

2. In reply to the 1st question proposed by Mr. J. P. Grant, the Officiating Secretary to the India Law Commission, I beg to remark, that I have no reason to believe that in any one instance is land held under fictitious names in the district under my charge. I conceive, therefore, that further observations from me on the subject are unnecessary.

I have, &c.

Zillah Paneeput, Magistrate's Office,
19 August 1837.

(signed) *A. Fraser*,
Magistrate.

(No. 125.)

From *S. S. Brown*, Esq. Magistrate, Hissar, to *H. B. Harrington*, Esq. Register to the Sudder Nizamut Adawlut.

Sir,

In reference to your circular of the 21st July, No. 783, relative to the practice of holding landed property under fictitious names, I have the honour to state that the practice has never obtained in this district, nor I believe in any of the other districts attached to the Delhi territory generally, though common in the Dooab and Rohilcund.

2. The practice originated with the introduction of our rule into these provinces, and of late years it has been greatly extended. It arose, and is still principally to be found in instances where public or private debtors, wishing to avoid the demands against them to which their estates might be liable, either effected a fictitious transfer of such as they had at the time, or, if a new acquisition, bought and took in mortgage, in the names of their dependants or of men of paper. It is also resorted to by a few proprietors of the Kaith or Bunuya tribe, with a view to escape the responsibility and calls on the part of the revenne and police authorities, to which they would otherwise, as landholders, be exposed.

3. It would be difficult under this view to point out any advantage in the continuance of the practice, but its prevention appears to be beyond the grasp of the law. It would be almost impossible to obtain legal proof of the fictitious holding, supposing the nature of the evidence sufficient to constitute proof to be first laid down, and any provisions of law would be null and void to suppress an arrangement privately concluded between two parties, and unevidenced as it would then be by any overt act.

I have, &c.
(signed) *S. S. Brown*,
Magitrate.

Office of the Magistrate, Hissar Division,
Delhi Territory, 17 October 1837.

P.S. I beg to add, with reference to your further call of the 4th ultimo and 6th instant, that the delay in my reply has been owing to my leave of absence in the past month, and to my moving into tents on my return, which led to the letter being overlooked.

(signed) *S. S. Brown*, Magistrate.

(No. 203.)

From *P. Trench*, Esq. Officiating Magistrate, Delhie, to *H. B. Harrington*, Esq. Officiating Register Nizamut Adawlut, Allahabad.

Sir,

I have the honour to acknowledge the receipt of your circular, No. 783, dated the 21st ultimo, and its enclosures, from the Secretary to the Indian Law Commissioners, dated the 20th June last.

The Government deeming the practice of subordinate judicial officers and others acquiring landed property secretly, and holding it under fictitious names, as inconvenient, the object of your communication is to elicit some measure that shall prevent its occurrence in future.

I beg to annex replies to the queries proposed as follows:—

Reply to query first:—Of the practice alluded to I have no personal knowledge, but it is currently represented to be very commou in this city, and property to a considerable extent is said to be held under feigned names.

Reply to query second:—The date of its origin, allowing the practice to prevail, cannot be easily fixed; but of the motives which induced it, the principal, it is probable, were, to conceal, under former tyranical rulers, wealth from the rapacity of power, to defraud creditors of their dues, to defeat the ends of justice and law, by secreting the means which might satisfy them, and more usually to lull suspicion of iniquitous accumulations, with the view longer to pursue dishonesty and corruption under the apparent garb of poverty or distress.

(B.) No. VI.
Respecting Lands held under *Fictitious Names.*

Reply to query third :—No possible advantage that can be imagined.

Reply to query fourth :—I think the most certain and least inconvenient provision of law for putting a stop to the custom, would be an Act of the Legislature, making all property which shall be proven in a court of judicature to have been obtained and held under a fictitious name, after a prescribed date, to be liable to forfeiture; and all property now held under a feigned name also liable to the same penalty, if not registered, within six months after the promulgation of the Act, in a book to be kept for that end in the office of the judge or collector.

I have, &c.
(signed) *P. Trench,*
Officiating Magistrate.

Delhie, Magistrate's Office,
26 August 1837.

(No. 268.)

From *C. Gubbins,* Esq. Joint Magistrate, Rohtuck, to *H. B. Harrington,* Esq. Register, Allahabad.

Sir,

In answer to your circular letter, No. 783, dated the 21st ultimo, and its enclosure, I have the honour to inform you that the practice of persons holding land property under fictitious names does not obtain in this district, landed property being of little value.

I have, &c.
(signed) *C. Gubbins,*
Joint Magistrate.

Office, Rohtuck Dn, Dehlee Territory,
14 August 1837.

(No. 166.)

From *J. Lawrence,* Esq. Officiating Magistrate, Southern Division of Dehlee, Goorgaon, to *H. B. Harrington,* Esq. Register, Allahabad.

Sir,

I have the honour to acknowledge the receipt of your letter of the 21st ultimo, with its enclosure, and beg to submit my replies to the queries of the Officiating Secretary to the Law Commissioners.

1. Is the practice of holding landed property under fictitious names common in the provinces under the jurisdiction of your court?

A. It is not the practice to hold lands under fictitious names in this district. Indeed I do not recollect ever hearing of a case of this kind in the Delhie territory.

2. If so, when did that practice originate, and what were the circumstances that induced it?

I have already stated that it is not the practice in this zillah.

3. Are there any advantages in the continuance of that practice, and if there be, what are those advantages?

I am not aware of any fair advantages which arise from this practice. It can only, I conceive, be done to evade, if necessary, either the demands of creditors or the laws of the land.

4. In case of it being determined to prevent the continuance of that practice, what provisions of law would most surely and conveniently, and with least risk of injustice to individuals, effect that object?

Forfeiture would most surely effect this object; and though such a rule might in particular cases press hardly on an individual, this, however, might be remedied by Government remitting the penalty, should it be considered expedient in any case. Any punishment short of forfeiture would, I am inclined to think, be ineffectual.

I have, &c.
(signed) *J. Lawrence,* Officiating Magistrate.

Magistrate's Office, Southern Division, Dehlee,
Goorgaon, 15 August 1837.

(No. 196.)

From *H. S. Boulderson*, Esq. Commissioner, First Division, Meerut, to *H. B. Harrington*, Esq. Register of the Nizamut Adawlut, N. W. P. Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 783, dated 21st ultimo, with copy of a letter from the Indian Law Commission, on the subject of Ismifurzee holders of lands, and to submit the following replies to the queries therein contained.

2. The practice of holding landed property under fictitious names cannot be said to be common in these districts. Instances might be doubtless found, but the practice has very greatly abated. The abatement I attribute to the publicity with respect to transfers of property given by the collectors office register, and the prevention by collectors of the possession of unregistered persons whenever any contest arose. The consequence was, that the real proprietor found himself obliged to resort to a civil action, to oust the Ismifurzee whose name he had caused to be registered. A late view of the law, quite opposed to the above, which had prevailed so many years, will afford full opportunities for the revival of the practice of holding land under fictitious names, should it become an object to do so, by preventing the knowledge of the transaction coming to light, inasmuch as registry of the transfer will not be a matter of necessity, and by preventing the collector from exercising the useful check he formerly did.

3. I cannot state the origin of the practice. I presume that lands bought by fathers, in the name of their children, and such like palpable transactions, the intention of which is evidently to save litigation after the real buyer's death, are not included under the odium of fictitious name holdings.

4. There are no advantages in the continuance of the practice, which can be necessary only for the purposes of fraud committed or intended.

5. I do not think that any provisions of law could be more effectual for the prevention of the practice than those already existing, if the prohibition to act upon those laws, as understood and construed by all the Boards of Commissioners and Revenue previous to the present Sudder Board, be withdrawn. I know not a more effectual proof of the efficiency of those laws than will be found in the fact, that in the western provinces, where the collectors' registry of mutations has been kept up (though from the stress of business and want of officers not so well as it should have been) according to the views of the law prescribed by former authorities, the practice is very insignificant; and that in the lower provinces, where the registry has not been made, or made only under such construction of law as that now prescribed here, which does away with its necessity and its use, the practice prevails considerably.

6. In addition to the above, if it were enacted that a real proprietor, when he had sued an Ismifurzee in the civil court, and his right being shown, should have to pay all the costs of suit; and that a judicial officer, or any class of persons whom it might be deemed right to prohibit from the acquisition of landed property, could not recover at all;—every desirable check would, I think, be put upon the practice.

I have, &c.
(signed) *H. S. Boulderson*, Commissioner.

Commissioner's Office, First Division,
18 August 1837.

(No. 112.)

From *G. W. Bacon*, Esq. Judge, Zillah Saharunpoor, to the Register to the Sudder Dewanny Adawlut, N. W. Provinces, Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 783, under date the 21st ultimo, with its enclosure.

With reference to the several points contained in the Secretary to the Indian Law Commissioner's letter, I beg to state, that holding landed property under fictitious names, as far as I can learn, does not appear to be common in this district. I know not what advantages are derivable by the continuance of the

(B.) No. VI.
Respecting Lands held under Fictitious Names.

practice to anybody but those who are immediately concerned; such persons, I believe, purchase and hold lands under fictitious names, in order to secure their estates from attachment and sale, in the event of any decree of court or other legal demand being made against them.

I apprehend considerable difficulty will be experienced in framing a law to carry into effect the proposal contained in the last paragraph of the Indian Law Commissioner's letter. Immediate forfeiture of the property to Government, in the event of discovery upon full legal proof, might possibly prevent the extension of the practice in those districts where it may be prevalent.

I have, &c.

(signed) *G. W. Bacon*, Judge.

Zillah Saharunpoor, Judge's Office,
29 August 1837.

(No. 121.)

From *R. C. Glyn*, Esq. Judge, Zillah Meerut, to *H. B. Harrington*, Esq. Register Sudder Dewanny Adawlut, N. W. Provinces, Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your circular letter, No. 783, dated 21st ultimo, with enclosure.

With reference to the several points on which the Indian Law Commissioners require my opinion, I beg to submit them as follows:—

1st. Is the practice of holding landed property under fictitious names common in the provinces under the jurisdiction of your court?

2d. If so, when did that practice originate, and what were the circumstances that induced it?

3d. Are there any advantages in the continuance of that practice, and if there be, what are those advantages?

4th. In cases of it being determined to prevent the continuance of that practice, what provisions of law would most surely and conveniently, and with least risk of injustice to individuals, effect that object?

The practice was first introduced under the British Government by Europeans and native public officers; the former precluded from holding lands in their own names, and the latter, when not so precluded, considering it inexpedient to appear as land proprietors in the districts in which they held official situations. Europeans will have no further occasion for employing feigned names, and since the disclosures and restitutions made by the Special Commissioners, secret purchasing by native public officers has fallen into disuse, and is very rarely had recourse to by individuals of other classes, as Ismifurzee conveyances of lands, houses, and other real interests, have never been recognised in the civil court of this district, such property being always considered to belong to the persons in whose names it appears registered. With reference to this district, I see no necessity for interference by legislative enactment.

I have, &c.

Zillah Meerut, Judge's Office,
26 August 1837.

(signed) *R. C. Glyn*, Judge.

(No. 34.)

From *J. Neave*, Esq. Judge, Zillah Allyghur, to *H. B. Harrington*, Esq. Register of the Sudder Dewanny Adawlut, N. W. Provinces, Allahabad.

Sir,

I HAVE the honour to submit the following reply to your letter, No. 783, under date the 21st of July last.

The practice of holding lands under fictitious names, though not common, does exist in this district, and has originated in my opinion since we have had the country. Its object, I fear, in the majority of cases, is to conceal purchases made

by

by servants of the Government, and where this is not the case, it has been had resort to for the provision of some relative whose name is used to prevent dispute or quarrel hereafter. To check the first, the annulment of the sale so effected, and fine to the extent of the purchase money, would perhaps tend to remedy the evil: the sellers generally being the parties cajoled, any interference with them, I do not think necessary.

I have, &c.

Zillah Allyghur, 29 September 1837. (signed) *J. Neave*, Judge.

(No. 145.)

From Lieutenant-colonel *Young*, Superintendent Dehra Dhoon, to *H. B. Harrington*, Esq. Register to the Sudder Dewanny and Nizamut Adawlut, Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your letters, Nos. 29 and 1056, under dates the 30th June and 4th September 1837, and in reply to inform you, after particular inquiry on the subject, that holding land under fictitious names is not common in the provinces, and in the jurisdiction of this court, nor can I ascertain an instance of its existence.

I have, &c.

(signed) —— *Young*, Lieutenant-colonel,
Dehra Dhoon, Political Agent's Office, P. Agent.
15 September 1837.

(No. 206.)

From *W. J. Conolly*, Esq. Magistrate, Seharunpoor, to *H. B. Harrington*, Esq. Register of the Nizamut Adawlut for the N. W. Provinces, Allahabad.

Sir,

IN reply to your circular letter, No. 783, of the 21st July last, I beg to state for the information of the Court, that the practice of holding lands under fictitious names does not, as far as I know, prevail in this district.

I have, &c.

Magistrate's Office, Zillah Seharunpoor, (signed) *W. J. Conolly*,
23 August 1837. Magistrate.

(No. 98.)

From *William Crawford*, Esq. Magistrate, Moozuffernuggur, to *H. B. Harrington*, Esq. Register to the Sudder Dewanny Adawlut, N. W. P. Allahabad.

Sir,

IN reply to your circular letter, No. 783, of the 21st July last, giving cover to a copy of a letter, No. 29, dated 30th June preceding, from the Officiating Secretary to the Indian Law Commission to your address, I have the honour to submit the following unavoidably brief replies to the questions proposed in paragraph 2 of the latter communication:

1. The district of which I am now in charge is of small extent in its area, and yields an annual revenue to Government of about Rs. 5,75,000 only; the villages are for the most part in the possession of resident proprietors, and I am therefore of opinion that the practice of holding landed property under fictitious names is by no means common; no cases of this nature, affecting either subordinate judicial officers or private judicials, having been brought to my notice since I received charge of the district, about six months ago.

2. As the practice above mentioned does not appear to prevail here, I am of course precluded from furnishing any answer to the question.

(B.) No. VI.
Respecting Lands held under Fictitious Names.

3. I have never yet been in any situation in which I have had occasion to make official inquiry regarding the extent of this practice and its results, as beneficial or the contrary; and,

4. Having no data whatever on which to form an opinion on the important subject under consideration, I feel myself quite incompetent to submit any suggestions respecting it.

I have, &c.
(signed) *William Crawford*,
Magistrate.

Moozuffernuggur Magistracy,
14 September 1837.

(No. 104.)

From *G. F. Franco*, Esq. Magistrate, Zillah Meerut, to *H. B. Harrington*, Esq. Register Nizamut Adawlut, Allahabad.

Sir,

In reply to your circular letter, No. 783, of the 21st ultimo, and its enclosure from the Secretary to the Indian Law Commissioners,

1. I have the honour to state that the practice of persons holding landed property under fictitious names is by no means general in this part of the country, and the only circumstance I am aware of, which would induce a person to have recourse to such a measure, would be to evade any penalty to which he would be liable for holding it himself.

2. It is not unusual for a person to register lands possessed by him in the names of his sons, wife, or concubines, in order that in the event of his death, they may succeed to the possession without dispute; but when this is the case, it is done openly and without concealment, and I imagine there is no advantage in a fictitious registry, unless, as I said before, in certain cases, to evade a penalty to which a real possessor may be liable.

3. Should it be determined to prevent the continuance of the practice alluded to wherever it may exist, I should conceive that no means would be more effectual to suppress it than to declare that all lands which may in future be recorded under a fictitious name should be rendered liable to forfeiture.

I have, &c.
(signed) *G. F. Franco*,
Magistrate.

Zillah Meerut, Magistrate's Office,
19 August 1837.

(No. 63.)

From *G. H. M. Alexander*, Esq. Officiating Magistrate, Boolundshuhar, to *H. B. Harrington*, Esq. Register of the Sudder Nizamut Adawlut, Allahabad.

Sir,

In reply to your letter of the 21st July, No. 783, and with reference to the copy of the letter from the Secretary to the Indian Law Commission of the 30th June, No. 29, which accompanied it, I have the honour to state that,

2. I am not aware of the existence of any legislative enactment prohibiting subordinate judicial officers from holding lands in their own names, and therefore I do not think that the practice at all obtains of their holding them under fictitious titles, as there can be no necessity for their having recourse to fraud for the attainment of that which is not prohibited.

3. I believe it, on the contrary, to be a common practice for persons in subordinate judicial stations to purchase lands openly at public sales, or to have the estates of others, on private arrangement between the parties, transferred to them and registered in their real names in the collector's records.

4. This practice, though I believe it to be general, is not, in my opinion, one that ought universally to be prevented, without proper restrictions, as it is but natural to conclude that persons so totally uninfluenced by any honourable or moral feeling, or actuated in any degree by a proper sense of duty, as the native judicial officers are, whether thanadars or the sheristadars and nazars of a foujdaree court, would, if possessed of landed property within the district or thannah in which they stood appointed, on the occurrence of a crime, and more particularly

larly a serious crime, in their villages, endeavour to screen the criminals, and obstruct as much as possible the ends of justice, rather than, by aiding in the apprehension and conviction of the offenders, subject themselves to suffer inconvenience, and perhaps detriment to their property, by the loss of able-bodied and hard-working tenants, however much the latter might have rendered themselves deserving of punishment.

I have, &c.

Bolundshuhur, Magistrate's Office, 13 September 1837. (signed) *G. H. M. Alexander*, Officiating Magistrate.

(No. 14.)

From *T. P. Woodcock*, Esq. Magistrate, Zillah Allyghur, to *H. B. Harrington*, Esq. Register to the Nizamut Adawlut, Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your circular, No. 783, dated 21st July last, relative to the practice which obtains in the country of persons holding landed property under fictitious names, and in reply to the queries contained in the letter from the Secretary to the Law Commission, to your address, to report,

1. That the practice referred to obtains to a very trifling extent in this district.

2. That the few cases which do occur in this district have had their origin among the omlah of the courts, who desired to conceal the circumstance of their possessing landed property.

3. I am ignorant of any advantages which the continuance of this practice can afford to either Government or the people, in similar cases to those which occur in the district.

4. In event of the Government determining that the practice shall not continue, and supposing of course that Government feel secure in the grounds which would render the proposed enactment just, the immediate attachment of landed property so held would be the securest method of abolishing the practice.

I have, &c.

Zillah Allyghur, Magistrate's Office, 9 November 1837. (signed) *T. P. Woodcock*, Magistrate.

(No. 37.)

From *T. J. Turner*, Esq. Officiating Commissioner, Third Division, Barelly, to *H. B. Harrington*, Esq. Register of the Courts of Sudder Dewanny and Nizamut Adawlut, N. W. P. Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 783, of the 21st ultimo, and to submit the subjoined reply to the several questions proposed by the Indian Law Commissioners.

2. The practice of holding landed property under the names of other persons than the real owners, was of frequent occurrence many years back, but is now almost unknown.

3. This practice was resorted to for several reasons; first, to conceal the acquisition of landed property by persons who, from their official situations, were prohibited from making fresh purchases; secondly, with a view of eluding the vexatious interference and oppression of the government native officers, revenue and police; thirdly, to save the property from sale in satisfaction of private debts.

4. Improved administration and a general diffusion of the knowledge of the regulations have almost entirely, if not altogether, removed the several causes which led

(B.) No. VI.
Respecting Lands held under Fictitious Names.

led to the practice in question, and as no advantage is now to be gained by adhering to it, the practice has been discontinued.

5. It does not appear to me, for the reasons above shown, that any new legislative Act is requisite.

I have, &c.
(signed) *T. J. Turner,*
Officiating Commissioner.

Commissioner's Office, Third Division Barelly,
18 August 1837.

(No. 75.)

From *W. Okeden,* Esq. Officiating Judge, Zillah Mooradabad, to *H. B. Harrington,* Esq. Register to the Sudder Dewanny Adawlut, N. W. P. Allahabad.

Sir,

In reply to your circular, No. 783, of the 21st ultimo, and enclosure, I have the honour to submit, for the information of the court,

1. In this district it is not customary to hold lands under fictitious names, nor are sales ever made without ascertaining who is the *bonâ fide* purchaser.

2. I am not aware of any advantage in allowing such a practice, and if such be the case in other districts, I am of opinion the sooner it be declared illegal the better. If an Act was passed prohibiting such a practice, and declaring all lands so obtained after due proclamation of the law to be liable to forfeiture, the custom would cease, and no individual suffer injustice.

(signed) *W. Okeden,* Officiating Judge.

Zillah Moradabad, Civil Judge's Office,
25 August 1837.

(No. 8.)

From *T. H. Sympson,* Esq. Joint Magistrate, North Division, Mooradabad, to *H. B. Harrington,* Esq. Register Sudder Dewanny Adawlut, N. W. P. Allahabad.

Sir,

I have the honour to submit the following reply to your letter, particulars noted in the margin.*

1. The practice of holding lands under fictitious names is one of common occurrence in this zillah.

2. As to the origin of such practice, and the circumstances which induced it, I am unable to express a decided opinion; I conceive, however, that the following circumstances have, in a great measure, led to the continuance, if not to the introduction of the practice: First, the orders issued by the Government, by which Europeans are prohibited from holding lands; also those by which the officers of Government are precluded from purchasing lands at public sales. Secondly, A want of confidence on the part of the natives of India in the British Government, when first they became subject to it; and, owing to their imperfect knowledge of the particulars contained in the enactments which then appeared, being unwilling to engage for their lands directly with the Government, probably under the apprehension of their respectability being injured, either owing to the rules laid down as regards the collection of the revenue, or on account of the liabilities attaching to the proprietors of lands, in instances in which they might fail to produce or apprehend criminal offenders. Thirdly, The practice that formerly existed in many parts of this country, of requiring security from proprietors for the due payment of the revenue for which they had agreed; in which cases, the said proprietors

* Circular letter from the Register Sudder Adawlut, N. W. Provinces, dated 21st July 1837, No. 783, with copy of letter from the Secretary to the Indian Law Commission, relative to the practice which obtains in this country of persons holding landed property under fictitious names, and requesting to be furnished with a report on magistrate's opinion on several questions connected with the subject.

prietors would generally prefer putting in some relation or servant, as the nominal engager with the Government, and tender in their own names the amount of security demanded. Fourthly, The dread of quarrels and disputes arising amongst their future heirs, and the great probability of lawsuits being the consequence. The cases of persons prohibited by the Regulations from holding lands, and who do so under fictitious names, is obviously an evasion of the law, to which, to answer their own purposes, they have resort.

3. I am of opinion that no advantages are likely to be obtained by a continuance of the present practice, beyond those that would appear to result to the parties concerned.

4. Instructions issued to the several collectors of land revenue, calling their attention to this practice, and strictly forbidding them to admit on their records the names of any individuals who may be ascertained not to be the real proprietors, might possibly tend to check such practice in future; and an enactment declaring that whenever a person holding lands under a fictitious name, may sue the real proprietor, no evidence of the nature of the transfer will be admitted, but that such arrangement will be considered as having been duly entered into, might likewise help to attain the object required.

I beg to add, that your circular letter above referred to was by some neglect mislaid, otherwise so long a time would not have transpired previous to your receiving a reply to it.

I have, &c.

N. Division, Mooradabad Magistracy, (signed) *T. H. Sympson*,
Bijnour, 23 September 1837. Joint Magistrate.

(No. 25.)

From *Geo. Blunt*, Esq. Officiating Magistrate, Mooradabad, to *H. B. Harrington*, Esq., Register to the S. D. and N. A., N. W. P. Allahabad.

Sir,

In reply to your circular letter, No. 783, of the 21st of July, and its enclosures, I have the honour to submit, for the information of the court, that from the inquiries I have made, it does not appear that the practice of holding landed property under fictitious names obtains in this district, and that no sales are made of landed property without the name of the purchasers being fully ascertained.

2. The advantages of such a practice, should it exist in any district, I am not aware of, and consider it desirable that it should be prohibited.

3. If an Act was passed declaring that all lands so held after a certain date would be liable to confiscation, unless registered in the real name of the purchaser, it would I think prevent a continuance of the practice, and preclude the possibility of injustice to individuals.

I have, &c.

Mooradabad, Magistrate's Office, (signed) *Geo. Blunt*,
25 September 1837. Officiating Magistrate.

(No. 44.)

From *J. Craigie*, Esq. Officiating Collector, Zillah Suheswan, Badaoon, to *H. B. Harrington*, Esq. Register to the Sudder Nizamut Adawlut, N. W. P. Allahabad.

Sir,

I have the honour to acknowledge your letter of 26th ultimo, with copy of circular, No. 783, from the Officiating Secretary of the Indian Law Commission, and to furnish the information required.

2. In reply to query 1st, I have the honour to state that the practice of holding land under fictitious names is happily unknown in this district; consequently,

3. A reply to query 2 is obviated.

4. As regards the 3d question, the custom alluded to is replete, in my opinion, with disadvantage, and devoid of a single counterbalancing benefit; holding out

 encouragement

(B.) No. VI.
Respecting Lands held under Fictitious Names.

encouragement for chicane, and facilitating the evasion of repeated enactments, more especially as relates to land held by native officers of Government.

5. Should (as suggested in query 4) it be resolved to prevent the continuance of such practice, the most effective check would be, I think, the passing an Act, that if lands henceforth be transferred either by sale, deed of gift, decree of court, or by any other form or mode, and entered in the collector's books, and be thereafter proved to have been made over to any person or persons assuming false names, or that the real names of parties be entered, but those parties be not *bonâ fide* the proprietors, such land shall be forfeited to government. I would take the liberty of suggesting that mortgage seems also to afford a field for fraudulent practices, and a similar enactment regarding all such engagements might be passed; and it be ordered that at the time of transfer the provisions of such Act be notified to the parties put in possession in the presence of the officer before whom the deed be executed.

I have, &c.
(signed) *J. Craigie,*
Officiating Collector.

Zillah Suheswan, Magistracy Badaoon,
2 November 1837.

From *C. Fagan*, Esq. Acting Joint Magistrate, Kashepoor, to *H. B. Harrington*, Esq. Officiating Register of the Sudder Nizamut Adawlut, Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your circular letter of the 21st of July, and of the 4th of September, and regret that an attack of illness has prevented my making an earlier reply to it. In consequence of the transfer of the revenue duties of the purgunnahs of Kashepoor into the collectorate of Bijnore, it is out of my power to refer to the records of the office, but during the period that I had charge, no instance came under my notice of landed property having been held under fictitious names; nor am I aware of the existence of any advantages for the continuance of a practice so irregular, and apparently calculated for none but fraudulent purposes. The penalty of the forfeiture of the and held under a fictitious name, appears to be the most efficient method of eradicating so objectionable a practice.

I have, &c.
(signed) *C. N. Fagan,*
Acting Joint Magistrate.

Kashepoor, Joint Magistrate's Office,
16 October 1837.

(No. 17.)

From *W. H. Benson*, Esq. Magistrate, Barelly, to *H. B. Harrington*, Esq. Register to the Court of Nizamut Adawlut, N. W. P. Allahabad.

Sir,

WITH reference to your circular letter under date 21st July last, forwarding copy of a communication from the Law Commissioners, dated 30th June, on the subject of holding lands in fictitious names, I have the honour to reply as follows to the questions therein propounded.

2. 1st. The practice of holding land in fictitious names does not, I believe, obtain in the district of Barelly, but that of holding lands in the names of children or dependants, though not uncommon, does not prevail to any considerable extent.

2d. Several circumstances appear to have led to the practice; the chief appears to be the desire to escape personal restraint and responsibility for Government balances; and in such cases near relations, especially the children of the real owner, to whom the property will eventually descend, are the persons in whose names the estates are registered: these are generally under age, or when adult, are sometimes resident in other districts, or in foreign territory, where no process can be served. The proverbial bad faith of the people is almost the only check to the extension of the practice of holding in the names of dependants, but is a most effectual one. The temptation of safety from compulsory process, by abandoning a menial, or a man of straw, to the consequences of default, would be too great,

(B.) No. VI. Respecting Lands held under Fictitious Names.

great, were not instances before the eyes of principals of treachery on the part of dependants, especially after the death of their masters had deprived the widow or children of the means of checking the assumption of proprietorship by the exhibition of proof of right. The practice can hardly be said to have originated under our rule; the earliest regulations make provisions against leasing in fictitious names, on account of the injury likely to be sustained by the public revenue from it. The temptations to it must have been greater under governments guided by no written rules in the collection of their revenue; and the additional precaution of concealing the name of the principal must have been more rigidly attended to than now, when, unless he has become security, he cannot be molested on account of a balance.

3. The advantages are but slight to a punctual payer of the government revenue. It may occasionally happen that a tehsildar, influenced by ill-feeling towards an individual, may give unnecessary annoyance; but a judicious control on the part of the collector will always be a sufficient security against any arbitrary proceedings of this kind. On the other hand, the disadvantages militating against the punctual realization of the public revenue, where the practice may prevail to any great extent, are obvious; and where the principals may be officers, holding a public situation, and the fact of ownership may be concealed, the course of public justice may be obstructed from quarters which it might be difficult to ascertain in order to remedy the mischief.

4. Where the principal may be an officer of Government, and the purchase or registry may be made in a fictitious name, the principals concerned being designedly, or in effect, concealed, the forfeiture of the property would appear to be only a just punishment for a concealment, which would most probably be based on evil motives; but such a severe punishment does not appear to be called for in other cases, and a fine, leviable from the principal, under the rules applicable to arrears of revenue, would seem to be most proper. In all cases the difficulty of establishing the truth of the conclusion will be the great stumbling block. The matter should be determinable only in a civil court. Information should be, in the first instance, tendered to the revenue authorities, and on a report to the Board, and on the receipt of their sanction, the collector should be promovent in the suit on the part of Government.

5. As instances may exist where a purchaser of property may, from a desire to settle it on a particular person, in order to exclude others who might otherwise claim to succeed to such uninherited and acquired property, an exception might be made in their favour, it being provided that in all such cases the principal shall declare his intention, and shall register himself as security to be looked to primarily for the revenue during his lifetime, in the same manner as securities who may tenant or underfarm lands in the names of others are liable primarily for the rent of those lands.

I have, &c.
(signed) *W. H. Benson*,
Magistrate.

Barelly, Magistrate's Office,
7 October 1837.

(No. 11.)

From *F. P. Buller*, Esq. Officiating Magistrate, Shajehanpoor, to *H. B. Harrington*, Esq. Register Nizamut Adawlut, N. W. P. Allahabad.

Sir,

In reply to your circular letter, No. 783, dated 21st July last, enclosing copy of a letter from the Secretary Indian Law Commission, I have the honour to reply, that if by the term "fictitious names" are meant those of persons who have no existence at all, I am not aware that the practice alluded to is common in this district.

I have, &c.
(signed) *F. P. Buller*,
Officiating Magistrate.

Shajehanpoor Magistracy,
18 September 1837.

(B.) No. VI.
Respecting Lands held under Fictitious Names.

(No. 383.)

From *R. N. C. Hamilton*, Esq. Officiating Commissioner, Second or Agra Division, to *H. B. Harrington*, Esq. Secretary to the Nizamut Adawlut, N. W. Prov. Allahabad.

Sir,

I HAVE had the honour to receive your letter, No. 783, dated 21st ultimo, conveying the desire of the court that I should furnish a report on certain points noticed in a communication from the Law Commissioners forwarded therewith, and in reply beg to state as follows.

The practice of holding landed property under fictitious names is not now common in the districts within this division, as far as inquiries enable me to form an opinion. Indeed it cannot be that an estate so held can escape detection in the progress of the professional survey and revision of settlement, unless a degree of inattention on the part of the European officer obtains which it is not possible can now exist.

The practice originated in some degree from the rules to repress the holding of lands by native officers, and also to the desire of acquiring undue influence through connexion with an office, which could not be obtained were parties holding office known to be proprietors of estates within the circle of their duties.

There are no advantages that I can discover, in a continuance of such fictitious holding.

I should hope to see the prohibition to hold lands withdrawn, for until it be considered that a man may be both a landholder and a servant of Government, I do not think either the fiscal or judicial administration can be open to every class of the community, and it is absurd to expect a man living on his estate with comfort, would sacrifice all this to become an officer of Government at a distance. I would propose that the penalty of dismissal be incurred, should it be proved that any officer had withheld the communication of his being possessed of land.

The superior local officers should be cautioned not to authorize every person holding estates to fill any office having jurisdiction over the pergunnah in which such estates may be situate, but beyond this I see no necessity for interference.

Amongst the many objections raised to our executive administration is, that it does not attach those residing under our influence to it, and that no native has any degree of interest in its success or failure. May not this be attributable to our not allowing those who are really respectable landowners and large proprietors, any degree of power, or the prospect of obtaining it for any useful purpose, without leaving their homes and going to a strange part of the country. I may observe, there scarcely is a magistrate who will not look to the zemindar of a village, and in some cases hold him responsible for what he is pleased to term "harbouring bad characters," notwithstanding the zemindar's inability to prevent the location, unless after a sacrifice of time and trouble, which in all probability would not gain for him any consideration.

The time I hope is not very distant when a wealthy and independent landed proprietor may be eligible to office, and exercise its powers within the circle of his influence, and thus whilst raised in the estimation of his community be able to promote their interests, and aid in a proper degree the executive administration of the country.

I have, &c.
(signed) *R. N. C. Hamilton*,
Officiating Commissioner.

Commissioner's Office,
Second or Agra Division,
14 August 1837.

(No. 157.)

From *J. S. Boldero*, Esq. Civil Judge, Agra, to *H. B. Harrington*, Esq Register to the Sudder Dewanny Adawlut, N. W. Provinces, Allahabad

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 21st July, with a copy of a letter from the Secretary to the Law Commission, under date June 30, containing four queries regarding lands held under fictitious names. To enable

enable me to reply fully to those queries, I sent copies of them to each of the moonsiffs in my district, that I might avail myself of any information they might possess; and also because I considered they would be able to explain the feelings which induce respectable natives to hold land under fictitious names. Waiting their answers has caused this delay in replying to your letter under acknowledgment.

In reply to the first question, namely, "Is the practice of holding landed property under fictitious names common in the provinces under the jurisdiction of your court?" the replies of all the moonsiffs are, that the practice is not common.

In reply to the second question, namely, "When did that practice originate, and what were the circumstances that induced it?" I find that the origin of the custom cannot be clearly ascertained. That it existed under the native governments, but has become more prevalent since the British rule; this is to be attributed to the following circumstances:

Under the native governments the pen and sword offered the readiest channels to fortune and distinction; lands were held in less estimation than they now are; the landowners were more liable to injustice and oppression from the native aumils, and consequently few of the higher classes invested their money in the purchase of estates.

Since the introduction of the British rule, the purchase of villages has become a safe and advantageous mode of investing money, and this has naturally led to the native officers of Government (who are not allowed to hold villages in their own names) purchasing them in the names of their relations and servants. Many merchants and other respectable men adopt this plan to prevent their being personally subjected to the disgrace and annoyances which the native officers have it in their power sometimes to inflict on zemindars who may incur their enmity. This, and the liability to be summoned to the thanahs, tehsildars', magistrates' or collectors' courts, is the chief cause of respectable men holding lands under fictitious names.

Fathers also occasionally purchase villages in the name of a favourite child, to ensure his ready succession to the estate on the death of his parents, and also thus to leave him a larger portion than he would have been entitled to had he shared equally with his brethren in his father's patrimony.

In reply to the third question, namely, "Whether there are any advantages in the continuance of the practice; and if there be, what are those advantages?" I consider that the only advantages arising from the system are to the actual proprietors, who, whilst they reap the profits of their estates, are exempted from the many petty annoyances they might be subjected to by being openly and personally liable to be summoned to the different cutcherries in their capacity of landholders. This to persons extensively engaged in trade is a great and positive benefit. So far as Government is concerned, there is neither profit nor loss, the nominal landholder performing all the duties of a real proprietor, and the land being always liable to be sold for the realization of any defalcation in the revenue.

In reply to the fourth question, namely, "In case of it being determined to prevent the continuance of that practice, what provisions or law would most surely and conveniently, and with least risk of injustice to individuals, effect that object?"

I have stated above that there are three classes of our subjects who hold lands under fictitious names.

1st. Relations or dependants of the native officers of Government.

2d. Merchants and other wealthy and respectable individuals.

3d. Fathers in the name of their children.

To put a stop to the first class holding lands under fictitious names, the surest mode would be to rescind all restrictions to their holding them in their own names. Give them the same facility of acquiring property which other individuals possess; let the sales to them be open and public; and any power which they may now possess of conniving at, or effecting fraudulent sales to their relations and dependants, will be destroyed. No other legislative enactment can, in my opinion, suppress the practice.

The practice of merchants and other wealthy and respectable individuals holding lands under fictitious names can only be suppressed by taking away the causes which render them unwilling to hold them in their own names. As these

(B.) No. VI.
Respecting Lands held under Fictitious Names.

cease to operate, so will the practice decrease; no provisions of law can put a stop to the custom, so long as it is for the interest of this class of men to continue it. The third class are so few in number that they are scarcely deserving of consideration; if there is any evil in the system, as it relates to them, it may be safely left to its own cure.

I have, &c.

Office of Civil Judge,
Agra, 17 October 1837.

(signed) *J. S. Boldero*,
Civil Judge.

(No. 203.)

From *H. Swetenham*, Esq. Judge of Furruckabad, to *H. B Harrington*, Esq. Register Sudder Dewanny Adawlut, Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 783, dated the 21st July last, with annexed copy of a letter from the Secretary to the Indian Law Commission, No. 29, dated the 30th June, relative to the practice of persons holding landed property under fictitious names, and to submit replies to the questions therein proposed.

Q. 1. Is the practice of holding property under fictitious names common in the provinces under the jurisdiction of your court?

A. It is.

2. If so, when did that practice originate, and what were the circumstances which induced it?

It prevailed previously to the introduction of the British Government. The practice has obtained to greater extent probably since the introduction of the British Government. Amongst the causes which induced the practice, I consider the following to have operated:

1st. The prohibition against Europeans to hold land, except under certain restrictions under the provisions of Regulation XIX. 1803.

2d. Illegal acquisitions of landed property by ministerial Government officers; to remedy which, Regulation I. 1821, and Regulation I. 1823, &c. were enacted.

3d. The heavy responsibility which attaches to landholders in matters of police; for instance, as regards proclaimed Ducoits, Regulation IX. 1808.

Neglecting to give information of, and harbouring bad characters, Regulation VI. 1810.

Ditto information of stolen property, Regulation I. 1811.

Ditto information of robbers, &c., Regulation III. 1812.

Ditto of murder, arson and theft, Regulation VIII. 1814.

Omitting to furnish dawks, Clause 5, Sec. 10, Regulation XX. 1817.

Not assisting to apprehend, Clause 10, Sec. 21, Regulation XX. 1817.

Not reporting suspicious persons, Clause 5, Sec. 73, Regulation III. 1821.

In the matters for which the above rules provide, and many other, fiscal as well as criminal, the local authorities, that is to say, the tuhseeldars and collectors, the tanedars and magistrates, have occasion frequently to summon the recorded zumeendars. Men of fortune or of family enter the names of their poorer relatives, friends, or domestics as the proprietor, to save themselves trouble, and to preserve their falsely-conceived dignity (izzul). Anticipated imposition of fines for neglect of duty may also have effect.

4th. Lands given to females are held sometimes under fictitious names, under the prejudice of divulging the ladies' names in public.

3. Are there any advantages in the continuance of that practice, and if there be, what are these advantages?

None.

4. In

On

4. In case of it being determined to prevent the continuance of that practice, what provision of law would most surely and conveniently, and with least risk of injustice to individuals, effect that object?

On proof in court that a sale of landed property had been effected in a fictitious name, for which good and satisfactory cause cannot be shown, the sale to be liable to be annulled on repayment of the principal of the purchase-money; no interest allowed.

I have, &c.
(signed) *H. Swetenham.*
Judge.

Furruckabad, Civil Judge's Office,
2 September 1837.

(No. 46.)

From *A. W. Begbie*, Esq. Civil Judge, Mynpoory, to *H. B. Harrington*, Esq. Officiating Register to the Sudder Dewanny Adawlut, N. W. P. Allahabad.

Sir,

With reference to your letter, No. 783, under date the 21st July last, and its enclosure, on the subject of the tenure of landed property under fictitious names, I have the honour to submit the following observations:

2. Finding myself unable to reply to the 1st and 2d queries of the Law Commissioners without reference to the revenue authorities of the district, I transmitted a copy of the letter of the officiating secretary to the Law Commission to the officiating collector, with a request that he would furnish such information on the subject as the records of his office and his own observation might enable him to communicate, and I have now the honour to submit a copy of Mr. Tyler's reply, under date the 20th instant.

3. From the officiating collector's reply, it appears that the practice of holding lands in fictitious names was at one time prevalent in the district, but is now seldom or ever resorted to.

4. It is further stated that the custom of holding lands in fictitious names is of very old date, and that many of the talookdars and petty rajahs, from fear of the reigning power, generally entered their gomastah's names; and that on the acquisition of these provinces by the British Government, many villages were found to be thus held; and that the native officers of the courts of judicature have been also known to purchase villages and register the names of other persons, with a view to prevent their own names appearing as malgoozars.

5. The officiating collector considers the practice of holding lands in fictitious names to be decidedly objectionable, without any countervailing advantages. It should, however, be taken into consideration, whether the facility afforded by the existing laws to the real proprietors of evading the registry of their names, be not in one respect advantageous to the State, by inducing capitalists to connect themselves with land, who would not do so if they were made amenable to the personal processes issuing from the collectors and the tuhseeldars. Perhaps by affixing a heavier penalty than is already provided to fictitious registry, persons of this description would be altogether deterred from embarking their capital in land, and the evil created by the new enactment would do the State more injury eventually than at present arises from the practice which it was intended to repress.

6. Individuals purchasing lands at public sales in fictitious names are liable to the penalties prescribed in Sections 15, 18, and 19 of Regulation XI. of 1822; and by Section 41, Regulation XLII. of 1803, other penalties are prescribed for wilful omissions and misrepresentations regarding the succession to estates by private transfer; and the above cited enactments, coupled with the risk which the real proprietor necessarily incurs of being fraudulently supplanted by the nominal though registered malgoozars, are probably sufficient to prevent the practice of fictitious registry becoming inconveniently prevalent; and it is also to be hoped that if the practice originated, as stated (and I apprehend correctly) by the officiating collector, in distrust of the ruling power, the greater confidence reposed by the landholders in the justice and clemency of the British Government will gradually induce them to abandon a custom for which a necessity no longer exists, and which can never be resorted to without the risk of injury to themselves.

(B.) No. VI.
Respecting Lands held under Fictitious Names.

7. No estate ought to be so highly assessed that, if falling in balance, and immediately advertised for sale, the sum bid for it would not suffice to cover the arrear. In the process of public sale, the Government have an engine of coercion unknown to the native rulers of the country; and when the threat of selling an estate fails to induce the proprietor (whether real or nominal) to make an effort to preserve his property, it may be presumed that either the estate is not worth holding on its present footing, or that the proprietor is incapable of managing it. In the first case, the proper remedy would be a reduction of the assessment; in the second the transfer of the property would be both equitable and desirable.

I have, &c.

Zillah Mymensing, 23 October 1837. (signed) *A. W. Begbie*, Civil Judge.

From *E. F. Tyler*, Esq. Officiating Collector, Zillah Mynpooree, to *A. W. Begbie*, Esq. Assistant Judge, Zillah Mynpooree.

Sir,

In reply to your letter of 25th August, enclosing copy of correspondence of Nizamut Adawlut and the Secretary to the Indian Law Commission, relative to the practice of persons holding landed property under fictitious names, I have the honour to inform you that the practice above alluded to was at one time prevalent in this district, but it is now seldom or ever resorted to.

The practice is undoubtedly objectionable, and continually causes much delay and inconvenience to the revenue officers in their collections, as they generally have to call upon a person without property, while the real defaulter evades all the disagreeabilities of duress or attachment of their effects.

The custom of holding lands in fictitious names is of very old date; many of the former talookdars and petty rajas, from fear of the reigning power, generally entered their gomastahs' names; and on the British accession to these provinces, many villages were found to be held in gomastahs' names, also the omlah of the courts of judicature have been known to purchase a village, and enter some other person's name, to avoid his own name appearing as malgoozar.

I am not aware there is any law to force a man to register lands in his own name, although possessed of the same; nor would I recommend the forfeiture of lands held under fictitious names; but it would be proper to make some strictures regarding this point, and to put down the practice: all lawful owners should, after six months' notice, be made to register such lands, now held under fictitious names, in their own names, and that in default thereof a heavy fine should be imposed, which the collector might realize either by attachment of his personal effects or by sale of such lands.

I have, &c.

Zillah Mynpooree, Collector's Office, 20 October 1807. (signed) *E. F. Tyler*, Officiating Collector.

(No. 39.)

From *J. Davidson*, Esq. Judge of Zillah Etawah, to *H. B. Harrington*, Esq. Register Sudder Dewanny Adawlut, N. W. Provinces, Allahabad.

Sir,

I have the honour to acknowledge the receipt of your circular letter, No. 783, under date the 21st July last, with annexed copy of a letter, No. 24, from the Secretary to the Indian Law Commissioners, dated the 30th of last June, and of your further letter, No. 1,018, of the 4th ultimo, requesting my immediate attention and reply to the subject of the former communication, an answer to which should, I beg to state, have been earlier submitted but for my absence from the district during the months of September and October.

2. So far as I have had the means of ascertaining the stated facts with regard to the first question proposed by the Law Commissioners, the practice of holding land in fictitious names would seem to be by no means common in this part of the country; I have observed it to exist, but in two kinds of cases; in the one, the object

object is a just one; in the second, clearly fraudulent; the first being where a parent has purchased estates in the names of his children, who are minors, with the *bonâ fide* intent that each estate becomes the property of the child in whose name it is bought; the second, where individuals involved in debt, in order to avoid the just claims of their creditors, transfer their estates, or purchase new ones, in and by fictitious names. No case has come within my own experience of native officers of Government holding lands under fictitious names.

3. With regard to the mode of preventing the continuance of the practice of holding lands under false names, under whatever circumstances originating, I conceive that in every case where the intent has been fraudulent, such as those of estates so purchased by officers of Government, or by parties being at the time of purchase or transfer, defendants in civil actions, or against whom decrees for money, or other property, have issued, the estate should be liable to forfeiture; and in cases where the object of the purchase has not been a dishonest one, that the purchaser, though a fictitious name, should be subject to a fine proportionate to the value of the property so purchased, which might at the same time be considered subject to all the legal liabilities both of the purchaser (that individual being proved) and of the person in whose name the estate is fictitiously held.

I have, &c.

Zillah Etawah, Judge's Office, (signed) *J. Davidson*, Judge.
2 November 1837.

(No. 154.)

From *W. H. Tyler*, Esq. Magistrate of Chuttra, to *H. B. Harrington*, Esq. Register, N. W. Provinces, Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 21st ultimo, this day received, and in reply, to give the following answers to the queries contained in the letter from the Law Commissioners which accompanied your letter.

Q. 1. Is the practice of holding landed property under fictitious names common in the provinces under the jurisdiction of your court?

A. The practice was very general formerly, but is not so now; indeed it may be said to be almost extinct in the Mahratta district.

2. If so, when did that practice originate, and what were the circumstances that induced it?

The practice not being common, no detailed reply is here called for.

3. Are there any advantages in the continuance of that practice, and if there be, what are those advantages?

I am not aware of any advantages to be derived from the continuance of the practice.

4. In case of its being determined to prevent the continuance of that practice, what provisions of law would most surely and conveniently, and with least risk of injustice to individuals, effect that object?

It might be effected by a simple enactment, making the practice illegal, and rendering the parties subject to a fine.

I have, &c.

Zillah Chuttra, M. O. (signed) *W. H. Tyler*, Magistrate.
15 August 1837.

From *E. F. Tyler*, Esq. Officiating Magistrate, Zillah Mymensing, to *H. Harrington*, Esq. Register Nizamut Adawlut, Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your circular letter, under date the 21st July, forwarding copy of a letter from the officiating secretary to the Indian Law Commission, relative to the practice of persons holding landed property under fictitious names, and in reply, to make the following answer to the queries transmitted in the officiating secretary's letter.

(B.) No. VI.
Respecting Lands held under Fictitious Names.

1. There can be but little doubt that the practice of holding lands under fictitious names in this country was at one time prevalent; but from the inquiries I have made, this practice in this district has never been carried to any extent, and that it is now seldom or ever resorted to.

2. The practice is undoubtedly objectionable, particularly in Malgoozaree estates; it continually causes much delay and inconvenience to the revenue officers in their collections, as they generally have to call upon a person without property, while the real defaulter evades and escapes all the disagreeabilities of undergoing duress, or an attachment of his effects.

3. The forfeiture of all lands held under fictitious names would undoubtedly have the desired effect, but perhaps such a measure may be considered too severe; however, after a certain period, the lawful owner should be made to register such lands as are now held in fictitious names in his own, and that in default thereof, a heavy fine should be imposed, which the collector might realize either by attachment of his personal effects or by sale of such lands.

I beg to apologise for not having made an earlier reply, but the fact is, I have been frequently called upon to visit the interior of my district within the last five weeks, and where I am now residing.

I have, &c.

(signed) *E. F. Tyler*,
Officiating Magistrate.

Camp Gowmurreah, Zillah Mynpoory Magistracy,
16 September 1837.

(No. 93.)

From *S. G. Smith*, Esq. Magistrate of Etawah, to *H. B. Harrington*, Esq. Register of the Nizamut Adawlut, N. W. Provinces, Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 783, of the 21st July last, with enclosure, and in reply to inform you that I have no reason for supposing that any subordinate officers under my control, or any other individual, hold landed property secretly or under feigned names in this district.

I have, &c.

(signed) *S. G. Smith*,
Magistrate.

Zillah Etawah Magistracy,
12 September 1837.

(No. 314.)

From *G. F. Harvey*, Esq. Collector of Agra, to *H. B. Harrington*, Esq. Register to the Sudder Dewanny Adawlut, N. W. Provinces, Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your letter to my predecessor, calling for the opinion of the magistrate of this district on the several questions submitted to the Court of Sudder Dewanny Adawlut, N. W. Provinces, by the Indian Law Commission "relating to the practice which obtains in this country of persons holding landed property under fictitious names," and in reply to state as follows:—

Q. 1st. Is the practice of holding landed property under fictitious names common in the provinces under the jurisdiction of your court?

A. As far as I am able to learn from a number of individuals who reside and and hold land in this district, I incline to the belief that the practice in question (called Ismi Furzi) had its origin long previous to the acquirement by the Honourable Company of these provinces. It appears to prevail in a less degree in this district than in parts of Rohilcund.

Bareilly

Bareilly and Cawnpore are, I am told, the districts in which such titles most generally exist. I append for the satisfaction of the court a list of estates held under fictitious names in the Agra district.

10 Hoozoor Tuhseel.
18 Futtehpore.
4 Futteabad.
7 Irradutnuggur.
16 Furrah Uhmere.
1 Bah Pinuhut.
2 Khundawlee.
9 Rherughur.
67

Q. 2d. If so, when did that practice originate, and what were the circumstances that induced it?

A. As stated above, I believe the practice to have been very commonly resorted to before our acquisition of these districts. Those whom I have questioned agree in stating that immediately upon our assuming the country, an increase to a great extent took place in the number of such titles, most probably from the uncertainty which possessed men's minds as to the nature of the rule to which they were in future to be subjected; but I believe that as the character of the British Government became known, it again fell into disuse.

Nearly every native from whom I have made inquiry, attributes its origin to the harsh measures to which landholders, and all others possessed of tangible wealth, were subjected under the native rule; the little dependence to be placed in arrangements with the then ruling power in matters of revenue, and the grinding cruelty with which, in many cases, the persons of the defaulters were made to answer for the failing in the purse.

There is abundant evidence of the severe treatment of defaulters under the native rule to justify this as the most natural explanation of this method of avoiding such consequences without entirely relinquishing a right to landed property, to be reasserted when the tyranny had passed over.

Q. 3d. Are there any advantages in the continuance of that practice, and if there be, what are those advantages?

A. The advantage from this practice in former days, is obvious; at present I am induced to think it is confined to the native ministerial officers of the country, who are prohibited from purchasing estates sold for arrears of revenue, and who become possessed in this way of that which legally they would be unable to attain.

The practice is, without doubt, considerably encouraged by the dread in which respectable zemindars are, of a summons to the magistrate's court to answer for and explain the cause of any disturbance which may occur in their immediate neighbourhood. I fear that the authority which the Regulations give to such calls by the magistrate has not always been used with a prudent regard for the inconvenience and trouble which it causes to people of respectable character, who are only blameable for not doing that which the police ought to have done, and who may have had no opportunity, or having it, may have not possessed the means of prevention. I know that the dread of these summonses operates powerfully to continue the custom called Ismifurzee.

Q. 4th. In case of it being determined to prevent the continuance of that practice, what provisions of law would most surely and conveniently, and with least risk of injustice to individuals, effect that object?

A. The practice is admitted on all hands to be falling into disrepute, and I believe no objection would be offered by the most concerned to an immediate enactment for its abolition, giving, of course, time for the change to be gradually effected.

I would respectfully suggest that in any enactment to this end, a clause should be inserted, allowing the large landholders to appear in the magistrate's court by attorney, and although it would not be politic at once to take away the power of calling in such person to answer for violences committed in the neighbourhood in which they reside, I would suggest that it be modified; that the particular offences committed in the neighbourhood in which they reside be named, on the occurrence of which a magistrate should be authorised to summon the parties not actually concerned,

(B.) No. VI. Respecting Lands held under Fictitious Names.

cerned, but who from their position may be supposed to be acquainted with the causes of the disturbances. In many cases a report by letter would answer all the purposes at present sought for; and if in it misstatements are found, the party forwarding it would justly incur the inconvenience of a personal attendance. I am inclined to think that in one year those titles to estates in this district now held under fictitious names, would, on a proclamation to this effect, be transferred to real names.

I have, &c.

Zilla Agra, Collector's Office, 18 October 1837. (signed) *G. F. Harvey*, Officiating Collector.

(No. 27.)

From *R. Lowther*, Esq. Officiating Commissioner, Allahabad, to *H. B. Harrington*, Esq. Register of the Court Sudder Dewanny and Nizamut Adawlut, N. W. Provinces, Allahabad.

Sir,

I have the honour to acknowledge the receipt of your circular, No. 783, dated the 21st July, with its enclosure, from the Secretary to the Indian Law Commission, relative to the practice of holding lands under feigned names.

2. I believe this practice is chiefly resorted to for the fraudulent purpose of evading the eventual execution of decrees of court. In the Cawnpore district, where the landholders have extensive dealings with the Mahjuns, fictitious transfers, are by no means uncommon; it was formerly the practice to grant a transfer of names on the personal acknowledgment of the parties concerned. I am, however, informed that within the last few months, upwards of 100 applications have been rejected by demanding from the transferring party a copy on stamped paper of the deed of sub-mortgage, or gift, under which the transfer was intended to be made. This precaution on the part of the collector, if generally adopted, would operate to a great extent in checking fraudulent transfers, because few people are willing to trust so far to their associates in fraud as to give them absolute power on the property.

3. I understand that Ismifurzee holdings are by no means uncommon among the officers of the civil courts. This may be accounted for either by the parties wishing to avoid the responsibility and inconvenience which attaches to the sudder malgoozar, or he may be desirous of concealing the fact that he possesses means of acquiring property beyond his legitimate savings. In either case I am of opinion that the preventive law cannot be too strict, and I would impose confiscation and dismissal from office as the penalty; it is a specific enactment only which can operate as a check and a warning.

4. These practices I believe originated with our rule, and have continued because they have never been formally interdicted; leases of a similar description may obtain in the revenue department, but I believe them to be less common than in the judicial branch of the service, but I would make no exceptions; the law with its penalties should be made to operate alike upon all.

I have, &c.

(signed) *R. Lowther*,
Officiating Commissioner.

Commissioner's Office, 4th Division Allahabad, 11 September 1837.

(No. 223.)

From *C. F. Thompson*, Esq. Zillah Judge, Cawnpore, to *H. B. Harrington*, Esq. Register to the Sudder Dewanny Adawlut, N. W. Provinces, Allahabad.

Sir,

Dewanny Adawlut. I HAVE the honour to acknowledge the receipt of your letter, No. 783, under date the 31st of July 1837, with an accompanying copy of a letter to your address from the Secretary to the Indian Law Commission, relative to the practice which obtains in this country, of persons holding landed property in feigned names, in which you request me, by order of the superior court, to furnish a report

(B.) No. VI.
Respecting Lands held under Fictitious Names.

a report of my opinion concerning the questions proposed in the accompanying letter.

I request you will inform the superior court that my answers to the questions proposed refer exclusively to the Cawnpore district.

The Indian Law Commission wish to be informed if the practice of holding landed property under fictitious names is common in the North-western Provinces, and what were the circumstances which led to its introduction.

The custom of holding landed property in feigned names has prevailed in the Cawnpore district since the surrender of the Ceded and Conquered Provinces to the British Government by the Nawab of Oude in 1803.

The circumstances which led to its introduction were these:—

1. The native officers in the establishment of the collectorship were prohibited from purchasing landed property, or at the Government sales, by Sec. 9, of Regulation XXVI. of 1803. These men, more particularly the dewans, head native officers of the collector's office, and the tehsildar, native collectors of the purgunnahs of the Cawnpore district, acquired large sums of money by fraud and extortion, and purchased estates sold by order of the collector, in the names of their relatives, connexions, or servants, or of imaginary persons whose names were invented for the occasion, with a view to evade the provisions of Regulation XXVI. of 1803, and to obtain a lucrative investment for their money, being from the nature of their employment accurately acquainted with the value of lands exposed for sale at the Government auctions for arrears of revenue.

Muhundar Narani, "dewan" of the collector's office in 1805, purchased Manza Purtulpoor, and other villages, in the name of his nephew.

Nasir Alli, "dewan" of ditto, purchased Monza Baopoor, and other villages, in the names of two imaginary persons, Mohummud Akbul, Mohummud Dowlut.

Ram Mohun Ghose, native of Bengal, tehsildar, purchased lands in the name of Mulmunny Dhut, his favourite monkey.

2. Native merchants have occasionally purchased landed property in the names of their "gomastahs," or head servants, in order to avoid the inconvenience and annoyance of being apprehended by the tuhseeldar's chupprassees, in the mofussil or the collector's at the Sudder station, and the contingency of being summoned to attend, and be detained in attendance at the magistrate's court, to answer complaints preferred by the mofussil police concerning want of co-operation, harbouring bad characters, &c.

3. Natives of Oude, more particularly servants of the Oude government, "chukleedars," "amils," &c. who have acquired large sums of money by corrupt and oppressive means, have purchased landed property in this district, in the names of their relatives and servants, with a view to conceal from the knowledge of the Oude government the real amount of their property, and to place their wealth beyond the control of that government.

4. Bankrupt merchants, shopkeepers, &c. have occasionally purchased landed property in feigned names, previous to a declaration of their insolvency, in order to defraud their creditors.

Q. Are there any advantages in the continuance of the custom, and what are they?

A. Native merchants, who hold landed property in feigned names, derive some advantage from the continuance of the custom, as they are enabled to devote their time and attention to their private business, without fear of molestation from the collector, magistrate, and police.

In case of it being determined to prevent the continuance of that practice, what provision of law would most surely and conveniently, and with least risk of injustice to individuals, effect that object?

Should the Government, on the recommendation of the Indian Law Commissioners, determine to prevent, by a regulation, the continuance of the custom of holding landed property in feigned names, the following provisions of law would effect the object in an efficient and equitable manner.

The programme of the proposed Regulation is omitted, as the causes which led to the introduction of the custom of holding landed property

(B.) No. VI. Respecting Lands held under Fictitious Names.

property in feigned names may possibly be different in other zillahs and in Bengal.

It is hereby enacted, that it shall be unlawful for any native of India, Great Britain, or of foreign countries residing in the province of Bengal and the North-west Provinces, to purchase landed property in the feigned names of their relatives, friends or servants, from the date of the promulgation of this Regulation in the official Gazette, and that it shall be unlawful for any native of India, Great Britain, or of foreign countries, residing in the province of Bengal and the North-west Provinces, to hold in their possession landed property in feigned names, after the expiration of three calendar months from the promulgation of this Regulation.

Any native of India, Great Britain, or foreign countries residing in the province of Bengal, and the North-west Provinces, who shall purchase landed property in feigned names, or hold in his possession landed property in a feigned name, in violation of the provisions of this Regulation, specified before the civil judge of the zillah in which the estate held in a feigned name is situated, to pay a fine to Government not more than six months' Government rent of the estate held in a feigned name, and not less than three months' Government rent of the same.

The collectors of land revenue of the zillahs comprised in the province of Bengal and the North-western Provinces, on receiving information that any native of India, Great Britain, or foreign countries, resident in the province of Bengal or the North-western Provinces, shall immediately proceed to make inquiries concerning the charge, and in the event of the complaint appearing to them well grounded, shall institute a summary suit on the part of Government against the person or persons accused of transgressing the provisions of this regulation in the civil courts of their respective zillahs. The judges of the zillahs comprised in the provinces of Bengal and the North-western Provinces, are hereby directed, on the institution of a summary suit in their courts, by the collectors of land revenue, against any person or persons accused of purchasing or holding landed property in a feigned name or names, in contravention of the provisions of this regulation, to issue a notice to the defendant, and proceed to try the case summarily in the manner prescribed by the Regulations of Government generally, and in the event of the action entered by the collectors appearing to them just and well founded, to order the defendant to pay, in addition to the costs of suit, a fine to Government not greater than six months' Government rent of the estate held in a feigned name, and not less than three months' Government rent of the same.

I have, &c.

Zillah Cawnpore, 22 Sept. 1837. (signed) *C. F. Thompson*, Judge.

(No. 46.)

From *J. T. Rivaz*, Esq. Judge of Futtehpore, to *H. B. Harrington*, Esq. Register of the Sudder Dewanny Adawlut, N. W. P. Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 782, of date the 21st of July last, transmitting the copy of a letter from the Secretary to the Indian Law Commissioners, No. 29, under date the 30th of June.

In reply to the first and second query of the Secretary to the Indian Law Commission, I beg leave to state that I am not aware that any judicial officer of this court holds landed property under a fictitious name.

In reply to the third query, I beg to submit, that only two advantages appear to me to accrue to the person who may hold landed property under a fictitious name, viz. that

that creditors may be defrauded, and dishonest gains concealed; of any honest advantages I am not aware.

In reply to the fourth query, I beg leave to submit my opinion, that in the event of the continuance of the practice being prohibited, a fine levied both on the real and nominal proprietor, the fine on the former to be peremptorily levied on the landed property, and that on the latter on any property forthcoming, would effect the object in contemplation.

I have, &c.

Dewanny Adawlut, Zillah Futtehpore, 1 September 1837. (signed) *J. T. Rivaz*, Judge.

(No. 92.)

From *S. Fraser*, Esq. Judge of Bundelcund, to *H. B. Harrington*, Esq. Register to the Sudder Dewanny Adawlut, N. W. P. Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 21st July last, calling for a report on the several questions proposed in a letter from the Secretary to the Indian Law Commissioners, relative to the practice of persons holding landed property under fictitious names.

In reply, I have the honour to state, that there are five descriptions of persons who adopt this practice in the provinces under the jurisdiction of this court.

1stly. The jageerdars of the neighbouring territory, who frequently hold lands in the name of their dependents, being unwilling to be brought individually into collision with the courts.

2dly. The natives of wealth and respectability in the provinces, who object to appear in person in our courts.

3dly. Hindoos of all classes, who hold lands in the names of different members of their family, wishing thereby to separate distinctly the property acquired by themselves from the joint claim of the other members of the family.

4thly. Subordinates of office, who adopt the practice with a view to evade the orders of Government.

5thly. Persons not subordinates of office, who similarly hold lands under fictitious names, with a fraudulent intent.

The practice has apparently originated with the introduction of our courts, and legislation in regard to it, excepting in cases when it is resorted to for fraudulent purposes, should, in my opinion, be adopted with great caution.

Where unobjectionable motives (as in the case of the first three classes mentioned) influence the parties, the power of a Government to interfere appears to be very questionable, since, as a general rule, all persons have a right to dispose of their private property in any way most agreeable to themselves; at the same time, the inconveniences and risk of the system, as concerns the first two classes especially, are a sufficient guarantee that it will cease when the grounds of objection which have given rise to it shall have disappeared or been removed.

In regard to the last two descriptions of persons, where fraudulent motives shall appear, I see no objection to declaring property held under fictitious names liable to forfeiture, nor do I perceive any other course by which an effectual check upon such proceedings can be exercised.

I have, &c.

Zillah Bundelcund, 3 October 1837. (signed) *S. Fraser*, Judge.

(No. 99.)

From *J. Dunsmure*, Esq. Judge of Allahabad, to *H. B. Harrington*, Esq. Sudder Dewanny Adawlut, N. W. P. Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 783, with the annexed letter from the Indian Law Commissioners.

(B.) No. VI.
Respecting Lands held under Fictitious Names.

2. In reply to the first question proposed by the Commissioners, I should say that the practice of holding landed property under fictitious names is not now common in this district. It did prevail to a great extent during the early part of our administration up to 1810, but since that period the practice has gradually declined, and at present may be said to have only a very partial existence.

3. In reply to the second question, I would observe that the practice is not invested with much antiquity, as it started into existence shortly after the cession of the district; many circumstances induced it. During the lax and feeble administration which immediately followed the cession, the rapid acquisition of landed property by all those connected with the fiscal management of the district, and more particularly by those who exercised a very pernicious influence over the executive officers, led the holders of estates to have recourse to the practice, for the purpose of screening their possessions. Thus the vast acquisitions made by the Nawaub Bokur Allee Khan, the Rajah of Benares, Deokunundune, and others, were registered in the names of their relatives and dependents. Another cause which operated, was the dislike of many to be subjected to the inconveniences of a system which involved the arrest of their persons. In the case of females being proprietors of estates, this practice did, and does now, almost invariably obtain. Again, individuals resort to this practice to defeat the just claims of their creditors.

4. To the third question I reply, that there is not a single advantage in the practice; on the contrary, it encourages fraud and bad faith, for families have been beggared by the dishonest conduct of those in whose names estates have been registered, merely from a repugnance on the part of the real proprietors to appear as the Government malgoozars. I entirely agree with those who recommend that all lands be declared liable to forfeiture, whether held by purchase or otherwise, under fictitious names. Even in the cases of female proprietors they should be required to have their names registered ; but in order to guard against personal annoyance to them, let the names of their managing agents be also recorded, who should be held responsible for all matters connected with the property.

5. In reply to the fourth question, I do not see the necessity for any provision of law, with the exception of that contained in the preceding paragraph in regard to lands held by females.

I have, &c.
(signed) *J. Dunsmure*,
Judge.

Dewanny Court, Allahabad,
15 September 1837.

(No. 557.)

From *J. C. Wilson*, Esq. Officiating Magistrate of Cawnpore, to *H. B. Harrington*, Esq. Register Sudder Nizamut Adawlut, N. W. P. Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 783, of 21st ultimo, giving cover to a letter from the Secretary to the Indian Law Commission, No. 29, of 30th June last, and in reply I beg to state, with reference to the 1st question therein proposed, that the practice of holding landed property under fictitious names, though prevalent, is less common in these provinces than it is in Behar and Bengal, and that it is much more common in the collections and civil departments than in the criminal. I know of no instance of it among the officers at present attached to the criminal court of this district.

2. In answer to the second question, I beg to state that the practice originated from the hour at which these provinces were transferred by the Nawaub Vizier to the British Government, and the prohibition consequent thereon against certain classes purchasing landed property.

There are two classes of persons who purchase landed property under fictitious names in this district. One of them consists of the omlah of the courts. These parties, from the knowledge which they acquire through their official situations as to the capabilities of different estates, become desirous of purchasing those that were very profitable. The law prevented their buying them in their own names, hence arose the practice of purchasing landed property in fictitious names; and hence the various rascalities set on foot by the tehsildars and others, to cause the sale of coveted estates, date their origin.

4. The

(B.) No. VI.
Respecting Lands held under Fictitious Names.

4. The other class consists of wealthy men, who have acquired their money at Lucknow, in a manner that will not bear investigation. These men, so long as they remain in service, are anxious to prevent its being known that they are wealthy, and are at the same time exceedingly desirous to invest their gains in the British territories. Their agents purchase estates in their own names; and a case is now about to be instituted in the civil court by one of the parties alluded to against his agent, who purchased a very large estate, and inserted his own name in the collector's books, for not giving it up to him on his arrival at Cawnpore.

5. In answer to the 3d question, I can safely assert, that there are not only no advantages in the practice, but that it is vile in the extreme. Any person at the head of an office, who is aware that a certain estate is the possession of a certain officer under him, can easily be on his guard against the illegal efforts made to favour it. Whereas should the purchase, as is too often the case, have been made in a false name, his ignorance of the real purchaser may lead him into the wiles laid to deceive him.

6. In answer to the 4th question, I should say, that the best plan for putting a stop to the practice would be an order to every owner of an estate to avow himself within three months from a certain date, under a penalty of forfeiting the estate; that in future any one should be allowed to purchase landed property, provided he bought it in his own name, the penalty of transgressing the order to be forfeiture of the estate. It would then rest with judges, collectors, and magistrates to see that no moonsiff, tehsildar, or thanadar was appointed to act in a division in which his estates were known to be situated. The malpractices of the under-hand system, as fully proved by the numerous decisions of the late special commission, would cease; and those who had earned their money honestly, might invest it in the district that they preferred, without being driven to evade a law, which will never be observed but by European officers.

I have, &c.

Zillah Cawnpore, Magistrate's Office, Camp Muckunpore, 16 Aug. 1837.

(signed) *J. C. Wilson*, Officiating Magistrate.

(No. 7.)

From *H. Armstrong*, Esq. Magistrate of Futtehpore, to *H. B. Harrington*, Esq. Register of the Sudder Nizamut Adawlut, N. W. P. Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of the Court's circular letter, No. 783, of the 21st July last, and in reply, to submit a report on the questions referred to in the letter from the Secretary to the Indian Law Commission.

2. The practice of purchasing and holding landed property under fictitious names does not in the least prevail in this district. It is customary for a parent to purchase an estate, and to have his son recorded as the proprietor of it, although the latter may never receive possession or derive any advantage from the property until the death of his father; but such a tenure can hardly be considered a fictitious one; and as the practice, as far as I have been able to observe, is not attended with any disadvantage, I am not aware of any argument for its abolition. Where the system of holding lands under fictitious names is common, it may be presumed, it is with the view of acting fraudulently. Under such circumstances, the practice should be put down by law, and the only provision which would most surely effect that object would be to render such tenure liable to forfeiture. I have not been able to learn when the practice originated.

I have, &c.

Futtehpore, Magistrate's Office, 12 September 1837.

(signed) *H. Armstrong*, Magistrate.

(B.) No. VI.
Respecting Lands held under Fictitious Names.

(No. 783.)

From *J. Lean*, Esq. Acting Magistrate of Humeerpore, to *H. B. Harrington*, Esq. Register of the Sudder Dewanny and Nizamut Adawlut, N. W. P. Allahabad.

Sir,

I HAVE the honour to submit answers to the four questions regarding the practice of holding landed property under fictitious names, contained in the letter of the Secretary to the Law Commissioners, dated 30th June, and forwarded with your circular letter, No. 783, of 21st July last.

Q. 1. Is the practice of holding landed property under fictitious names common in the provinces under the jurisdiction of your court?

A. The following memoranda will show the number and description of landed tenures in which a holding under a fictitious name is suspected in this district; there are probably many more, but these only have come to my notice:

1st.	Estates held by purchase at public sales, on account of decrees of court and revenue balances - - -	6
2d.	Ditto held by private purchase - - - -	43
3d.	Ditto held in farm (mustojiers) - - - -	37
4th.	Ditto held by hereditary descent - - - -	19
	TOTAL - - -	105

The total number of estates in the district is 904, so that there is a fictitious holding in one of every nine. By the word holding, possession must not be understood in every case; for instance, in several of the above-mentioned estates neither the actual proprietors nor their fictitious representatives are in possession, the estates having been let in farm, but the names of the fictitious representatives are still registered as proprietors.

Q. 2. If so, when did that practice originate, and what were the circumstances that induced it?

A. I have no means of exactly determining when this practice originated, but the following appear to have been the causes which led to the fictitious holding in the estates as above classified:

1st, 2d, and 3d class.—1. The hope of avoiding the annoying responsibility in police matters which attaches to the registered proprietor:

2. The hope of avoiding attachment and sale of real and personal property, and imprisonment, in the event of a balance occurring; thus, in fact, making the estate alone answerable, either by sale or farm, for the government revenue.

4th class.—1. The above two causes, striking out the word "sale" in the latter:

2. The wish to avoid giving security for their farming leases. The farmer in this district generally gives five per cent. on his lease to a neighbouring zemindar, who in return pledges his estate as security. To avoid this, a man of substance puts forward a creature of his as a farmer, and becomes security himself, thus conforming to the letter, though not to the spirit of the revenue rules:

3. The wish of an independent chief on taking an estate in farm, to avoid the indignity of having his name registered as a malgoozar of another government. This is, of course, peculiar to a district like this, which is surrounded by and intermixed with independent territory.

Q. 3. Are there any advantages in the continuance of that practice, and if there be, what are those advantages?

A. I can conceive no possible advantage in any of the cases given in the answer to the last question.

Q. 4. In

A. In

Q. 4. In case of its being determined to prevent the continuance of that practice, what provisions of law would most surely and conveniently, and with least risk of injustice to individuals, effect that object?

A. In the case of proprietary tenures, either by public sale, private sale, or hereditary descent, the law should provide that if all such fictitious tenures were not declared within a certain period to be given, the penalty of fine, attachment, or confiscation should be incurred.

No legal enactment appears necessary as regards farming tenures, as the collector himself, in making the settlement, can always prevent, if he chooses, any such fictitious arrangement.

I have, &c.

Humeerpore, Magistrate's Office, 30 September 1837.

(signed) *J. Lean*, Acting Magistrate.

(No. 226.)

From *W. S. Donnithorne*, Esq. Officiating Magistrate of Banda, to *H. B. Harrington*, Esq. Register to the Nizamut Adawlut, N. W. P. Allahabad.

Sir,

In reply to your letter, No. 783, of the 21st ult., with enclosure, containing the four queries of the Indian Law Commissioners, I have the honour to send you the following answers.

1 & 2. That I believe the practice of holding landed property under fictitious names on the part of subordinate judicial officers is not common in the North-western Provinces; nor is there reason, that I know, why any concealment should be useful to them, as they (unlike revenue subordinate officers, by Section 14, Regulation XXV. of 1803) are not prohibited by any enactment from holding lands in their own names.

3. I am not aware that there are any advantages or disadvantages to the public or to government in the continuance of the practice, as to subordinate officers of the criminal courts, nor indeed of the Civil Department, unless sudder ameens or moonsiffs be reckoned subordinate officers; they, and in general any who have the decision of civil suits respecting real property, should not perhaps be allowed to possess any interest, either direct or indirect, in landed property, situate within the limits of their own jurisdiction.

4. To prevent the continuance of the practice (if thought necessary), I would recommend that the mere possession of lands situate within the jurisdiction of the office to which subordinate officers were attached (or their own jurisdiction in the case of sudder ameens and moonsiffs), in whosoever's name they be held, should be considered a disqualification for office, unless such landed property, clearly defined, had been specially allowed to be held; and in cases in which any deceit or concealment had been practised, either at or after appointment, the offender should be subjected to fine and imprisonment, or only imprisonment, in the same manner and to the same extent as for bribery or other malversation in office.

The forfeiture of the lands seems to me, as a general rule, to be both too arbitrary and severe a measure for the present enlightened times, and also calculated, in the case of there being a copartner not in government employ, either to involve the comparatively innocent with the principal in guilt in a similar punishment (if the whole of the lands should be forfeited), or (if only the offender's share should be declared forfeit) to allow the offender to escape with impunity.

The difficulty of determining, under any circumstances, the individual rights and interests of two putteedars or partners in any particular land is well known to the Court; how much would that difficulty be increased when both parties had an equal interest in concealing the truth, and were perhaps leagued together to defeat the inquiry!

With respect to the holding of lands on the part of others than subordinate judicial officers (to which your letter and enclosure seem also to refer) in fictitious names, I beg to observe,

1st. That I believe that the practice is very extensively prevalent;

2d. That it is coeval, or nearly so, with the present government; and is in some degree caused by the proprietors being desirous of being free from all direct

(B.) No. VI.
Respecting Lands held under Fictitious Names.

responsibility as to revenue and police matters, and from the consequent annoyance often received from tuhseeldars and thanehdars, from the dustuks of collectors and summonses of magistrates ;.

3d. That these are some of the advantages which they gain, and I know of no inconvenience or loss to the government or the community arising from the practice ;

4th. That I do not think it possible to prevent this practice by any enactment, consistent with the justice and moderation for which the British Government has been always distinguished. Every person should surely have the power to give, *bona fide*, or commit in trust, his estate to any one he please.

I have, &c.

Zillah Banda, 14 Aug. 1837. (signed) *W. S. Donnithorne,*
Officiating Magistrate.

(No. 350.)

From *E. Morland,* Esq. Joint Magistrate of Allahabad, to *H. B. Harrington,* Esq. Register to the Sudder Nizamut Adawlut, N. W. P. Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your circular letter of the 21st of July, together with copy of a letter from the Secretary to the Law Commission, asking certain questions respecting the custom of holding landed property under feigned names.

In reply, I beg to state that the custom does not prevail to any very large extent in this district, and might be easily checked altogether, by declaring by law that after a certain period such property should be forfeited to government.

I have, &c.

Magistrates' Office, Zillah Allahabad, 20 September 1837. (signed) *E. Morland,*
Joint Magistrate.

(No. 22.)

From *F. Currie,* Esq. Commissioner for the Benares Division, to *H. B. Harrington,* Esq. Register, Nizamut Adawlut, Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your circular letter, No. 783, dated 21st ultimo, with its enclosure.

2. It is very seldom that the fact of a person holding land under a fictitious name has come under my cognizance as commissioner of circuit, and that only in cases of dispossession, as described in Regulation XV. 1824; the origin of the practice in all which seems to have been the prohibition which hitherto existed to Europeans, employed in the cultivation of the indigo plant, &c. holding land in their own names.

3. As far as my experience goes, I cannot say that I have discovered any inconvenience to police arrangements, or detriment to the interests of the state, or individuals in the department of criminal justice, from the existence of the practice.

4. Should it be deemed expedient to put a stop to the practice, I imagine that it would only be necessary to declare it illegal, and that persons holding lands under fictitious names shall not be able to sue or defend suits relative to occupation of, or forcible dispossession from such lands, in the Foujdarry Court.

5. The prevalence of the custom is, I believe, not unknown to the revenue authorities, and the judges of the civil courts, to which departments the Law Commissioners have doubtless referred for information and opinions.

I have, &c.

Commissioner's Office, 5th Division, Ghazeepore, 16 August 1837. (signed) *F. Currie,*
Commissioner.

(B.) No. VI.
Respecting Lands held under Fictitious Names.

ABSTRACT.

Acknowledges letter of the 21st ultimo, with its enclosure, and communicates observations and opinion regarding the practice which exists of persons holding land under fictitious names.

(No. 36.)

From *F. Currie*, Esq. Commissioner for the Fifth or Benares Division, to *H. B. Harrington*, Esq. Register to the Court of Sudder Dewanny Adawlut, N. W. P. Allahabad.

Sir,

IN accordance with the instructions contained in your letter, No. 1080, dated 8th ultimo, I have the honour to send you a more general reply to the questions put by the Law Commissioners relative to the practice of holding lands under fictitious names.

Reply to 1st question.—The practice is not very prevalent, but exists to a certain extent.

Reply to 2d.—Partly from rajas and persons of rank and family considering it derogatory to them to have their names recorded as proprietors, and being desirous to avoid the personal process in case of balance of revenue, which the record of their names as proprietors would involve; and partly owing to the Regulations heretofore in force, which prohibited Europeans holding lands in their own names.

Reply to 3d.—None; but in the case of rajas and others, it is unobjectionable, as the estate is, or ought to be, sufficient security for its revenue.

Reply to 4th.—I imagine it would only be necessary to declare the practice illegal, and that persons holding lands under fictitious names shall not be able to sue or defend suits relating to such lands, either themselves or by proxy, in the courts of judicature; or be competent to convey a valid title in transfer of such property.

I have, &c.

Commissioner's Office, 5th Division, Ghazeepore, 19 Oct. 1837.

(signed) *F. Currie*, Commissioner.

ABSTRACT.

Acknowledges letter of the 8th ultimo, and forwards replies to the questions relative to the practice of holding lands under fictitious names.

(No. 193.)

From *W. Jackson*, Esq. Judge of Goruckpore, to *H. B. Harrington*, Esq. Register of the Sudder Dewanny Adawlut, Allahabad

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 783, of the 21st July 1837. Civil Department.

2. Agreeably to the orders therein contained, I subjoin my answers to the several questions of the Law Commissioners regarding the practice of using fictitious names in the transfer of property.

Answers.

A. 1. The practice is common here, but not so much so as in other parts of India where I have been employed, Behar and Allahabad, for instance.

A. 2. The object in using a fictitious name is undoubtedly concealment. During the native governments the practice was very unfrequent, although as every rich man was liable to extortion in proportion to his riches, it was his object to conceal the extent of his property as far as possible; the same object now exists with regard to native officers of government or others who have obtained property in an illegal manner, and are desirous to conceal the acquisitions from the government; persons who have by corruption obtained a large property generally register it, or have the title-deeds drawn up in the names of their relations; when Europeans

(B.) No. VI.
Respecting Lands held under Fictitious Names.

peans were not allowed to hold lands, indigo planters generally had their engagements with cultivators drawn up in the names of their gomastahs. There is, however, another and more legitimate object which some have in view: persons wishing to settle property on their relations and friends, purchase it in their names, the nominal purchaser being often a minor. There are some difficulties in effecting gifts of property, both under the Hindoo and Mussulman law; and they can only be effected under certain restrictions and formalities, which render the transfer subsequently open to legal attacks, and it is far easier to prove a simple document of sale in a court, than that the prescribed formalities, or a deed of gift have been observed, and that it is not invalidated by the legal restrictions.

A. 3. I know of no advantages at present in allowing such a practice to exist, excepting the convenience of making settlements of property or gifts, as above mentioned; these arise from peculiarities, perhaps defects in the law, which might be remedied in a more regular manner by removing the inability to alienate; at all events, as the Hindoo and Mussulman laws regarding property form part of the religion of the people, they should put up with the inconveniences attending them, as long as they profess those religions. Christians have long laboured under certain disabilities in this country; these have lately been done away. The object of concealing ill-gotten wealth is not a legitimate one, and the sooner the means of doing so are removed, the better, especially now that natives are admitted to offices of high trust.

A. 4. I see no sufficient reason for allowing the practice to continue, and would fix a day, after which no purchases made in fictitious names should be valid; but of course the law could have no retrospective effect. I look on the practice as conducive to concealment of fraud, and can see no reason for concealment of fair and honest transfers; if the actual law regarding the transfer of property is so bad that such a legal fiction is necessary to enable a proprietor to make a transfer which is open to no reasonable objection, the law should be amended in a more simple and regular manner; great difficulty in ascertaining the real meaning of a deed, continually occurs in the courts of law from the use of ficticious names, and I know of no adequate advantage arising from it, that should induce the government to allow of its continuance.

I have, &c.
(signed) *W. Jackson,*
Judge.

Dewanny Adawlut, Zillah Goruckpore,
4 September 1837.

(No. 34.)

From *A. C. Heyland,* Esq. Judge of Azimghur, to *H. B. Harrington,* Esq. Register to the Sudder Dewanny Adawlut, Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your circular letter, No. 783, of the 21st ultimo, relative to the practice of persons holding land under fictitious names.

2. In reply, I beg to state that such practice is by no means so common in this district as in most others; in fact, since the late settlement, when the name of each landed proprietor was so prominently brought forward, and since the late Act allowing British subjects to hold land in their own names, there are but very few instances, I consider, remaining. In addition to which, there are no wealthy and independent zemindars, such as in Bengal, who, from the dread of being called into court, hold their lands under fictitious names, or have them registered in those of their servants.

3. There cannot be, I conceive, any public advantage from persons holding their lands under fictitious names, and the prohibiting such practice would give general satisfaction; and the Court of Sudder Dewanny Adawlut cannot but be too well aware of the innumerable advantages to be derived from its discontinuance, without entering into the detail of its benefits. The private advantages I consider to be almost all of a fraudulent nature, with the exception of natives of high rank and caste, who would dislike being rendered liable to the responsibility to which zemindars are by the Regulations.

4. There

4. There would not, I conceive, be any injustice in declaring such a practice to be in future illegal, and in the event of its being brought to the notice of the collector, that such land should be liable to confiscation, with the sanction of the Governor-general in Council; that should the holder of such land be a judicial or ministerial officer of government, that he should be dismissed from office; and further, that in the event of its appearing that such lands were so held with a fraudulent intent, that the holder should be further liable to fine and imprisonment.

5. Ample provision and security should, however, be allowed to zemindars who wished to be released from their responsibility, by appointing a proper agent.

I have, &c.

Dewanny Adawlut, Zilla Azimghur, 22 August 1837. (signed) *A. C. Heyland*, Acting Judge.

(No. 137.)

From *D. B. Morrieson*, Esq. Judge of Jaunpoor, to *H. B. Harrington*, Esq. Register, Sudder Dewanny Adawlut, N. W. P. Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your circular letter, No. 783, under date 21st ultimo, and to refer the Court to my opinion relative to the practice which obtains in this country of persons holding landed property under fictitious names, forwarded from Benares, as magistrate and collector.

I have, &c.

Zillah Jaunpoor, 26 August 1837. (signed) *D. B. Morrieson*, Judge.

(No. 229.)

From *H. H. Thomas*, Esq. Judge of Mirzapore, to *H. B. Harrington*, Esq. Register of the Sudder Dewanny Adawlut, N. W. P. Allahabad.

Sir,

IN compliance with instructions conveyed in your letter of the 21st July last, I have the honour to submit my sentiments on the several questions proposed by the Law Commissioners, relative to the practice of persons holding landed property under fictitious names.

2. I have no reason to suppose that this practice of holding lands under fictitious names is less common in the district of Mirzapore than in other parts of British India.

3. It would be difficult to state with accuracy when it originated, but it may be traced up to the times of Mr. Jonathan Duncan's settlement; and I am informed that the practice prevailed even under the native governments. As for "the circumstances that induced it," they must have been as various as the motives of individuals who had recourse to it, but that the main object was deception, I should think, scarcely admits of a doubt.

4. I cannot call to mind the slightest advantage which this extensively mischievous practice possesses; on the contrary, the total abolition of it appears to me likely to lead to most wholesome and beneficial results. I am not required to specify the disadvantages; and indeed it would be superfluous at this late period, when the records of our courts may furnish such abundant proof of its having encouraged bad faith, constant litigation, escape from responsibility, and eventual wrong.

5. I protest it does not occur to me why proprietors or holders of lands should conceal their real names, except from a fear of disclosing some dark transaction, or with the prospect of achieving some remote piece of villainy. The practice seems altogether unnecessary; for in event of individuals being unable to superintend their estates in person, they can always provide for their management by power of attorney, which is an open and intelligible process, whilst the fictitious

(B.) No. VI. Respecting Lands held under Fictitious Names.

tious system drags with it all sorts of inconveniences, and is objectionable in every respect. If the government determine to prevent the continuance of this practice, the provisions of the law should affect, not only native officers of government, but all persons whatever; and I am of opinion that, in framing them, no great tenderness is expedient. The practice itself being vicious and universal, the prohibiting law should be strict and absolute; and forfeiture should be declared the penalty of its infringement.

I have, &c.

Dewanny Adawlut, Mirzapore, 14 September 1837.

(signed) *H. H. Thomas*, Judge.

(No. 169.)

From *G. Mainwaring*, Esq. Judge of Benares, to *H. B. Harrington*, Esq. Register to the Sudder Dewanny Adawlut, N. W. P. Allahabad.

Sir,

I HAVE the honour, in compliance with the instructions conveyed in your circular letter, No. 783, under date the 21st ultimo, to submit herewith my replies to the several queries contained in the accompaniment to your letter under acknowledgement, on the subject of persons holding lands under fictitious names.

1. The practice of holding lands under fictitious names within the jurisdiction of this court is, I am led to believe, very common.

2. It has always been so, and the practice, I am informed, prevailed previously to the acquisition of this province by the British Government. The present inducement to the practice is frequently of a fraudulent nature, viz. that by the property in question being purchased, and held in the name of a servant, or dependent relation, it may be exempted from the grasp of creditors. Many estates too have been purchased, or are held under fictitious names, by the class of natives prohibited from becoming landholders by Section 15, Regulation V. of 1795; and though by that law the discovery of the practice subjects them to the penalty of forfeiting the property to government, and though special Commissioners have been nominated under Regulation I. of 1821, to bring such transactions to light, it must be presumed that the profit attendant on the illegal practice is sufficiently great to induce individuals to continue it at all risks, since it is a matter of notoriety that it still prevails.

3. I am not aware that any advantages can accrue to government by the continuation of a practice at once illegal and of fraudulent tendency.

4. I am not prepared to specify any rule that would effectually put a stop to the practice, but I think that if the penalty specified in Section 15, Regulation V. of 1795, was made generally applicable to individuals purchasing at sales under other names, and if all persons now holding lands benamee, were required within a certain period to come forward and register the proprietary right in their own names, under the penalty therein specified, it would have the effect of considerably checking the practice, and, as far as I can see, without any risk of injustice to individuals.

I have, &c.

Dewanny Adawlut, City of Benares, 17 August 1837.

(signed) *G. Mainwaring*, Judge.

(No. 265.)

From *E. P. Smith*, Esq. Judge of Ghazeepore, to *H. B. Harrington*, Esq. Register to the Court of Sudder Dewanny Adawlut, Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 783, dated 21st July, with its enclosures from the secretary to the Indian Law Commission, proposing certain questions on the subject of fictitious transfers of land, and in reply to submit the following observations:—

Reply

(B.) No. VI. Respecting Lands held under Fictitious Names.

Reply to Question 1.—The word fictitious, as applied generally to transfers of landed property, admits of two constructions, which must be separately considered.

First. If by fictitious we are to understand imaginary, or absolutely now existent, then I apprehend the practice of purchasing and holding landed property, in a name without an owner, is of very rare occurrence, for obvious reasons.

But secondly, taking the word in its other sense of false, or not genuine, as for instance, when a feigned name, *i. e.* the name of a person possessing no interest or right in the matter, is purposely substituted in lieu of that of the real party to a transaction, the practice adverted to is known to be very prevalent in public as well as in private transfers of real property. There is, however, a third description of sale, by no means uncommon in this province, differing indeed essentially from both the foregoing, but still liable from its resemblance to be confounded with them, I mean the purchase of land in the name of a son or relative during the purchaser's lifetime, for his or their exclusive benefit, or otherwise as the case may be, but avowedly and openly made, without any attempt at concealment. Transactions of this character, though not embraced in the inquiries of the Law Commission, appear deserving of notice, as intimately connected with the general question of modifying the law.

Reply to Question 2.—In regard to the origin and the causes which led to the adoption of the practice in question, there is little doubt that, under the native governments of India, it was by no means so common as under our rule, and for this simple reason among others, that in those times, when might was right, and the end was considered to justify the means, the mere cloak of a dependant's name appearing on the rent-roll could afford to the real proprietor little or no protection against the tax gatherer's coercive measures. Their operation was generally brought to bear upon the *bonâ fide* possessor of the property, or such of his connexions as might happen to fall into the great man's power, without much attention to names and records, thus defeating the main object of concealment.

A mode of proceeding so arbitrary and off-hand, did not, however, square with English notions of justice and good policy, and consequently the introduction of our rule gave birth to a new system, the main principle of which was to recognise as the real proprietor the person ostensibly borne upon the record, and accordingly the law, in its anxiety for the liberty of the subject, insures exemption from coercive process to every one save the party actually under engagements to government, even in cases when the fact of private connexion or partnership may be matter of notoriety. The same reasoning applies with equal force to the landholder's obligations and liabilities in regard to matters of police and the maintenance of public order. The mere chance of being required to appear in person before a court of justice to answer for the misdeeds of agents or dependants, the being subject to the caprice and demands of local police officers on every trifling occasion of real or pretended disturbance, to say nothing of other annoyances incident to the possession of wealth and station in a country where discretion has so wide a range, and the well-being of society depends so much upon the personal character of the man in authority, are, with the native of rank, considerations quite sufficient to account for the frequent resort to the practice under discussion; and so long as prejudice maintains its sway, and public spirit is at so low an ebb, they will continue to produce a similar result, unless put down by law. The mainspring however of this mischievous system may be attributed to the causes so fully detailed in the preamble of Regulation I. 1821, a state of things which naturally resulted from the great power and confidence reposed in the government native officers on the one hand, combined with the ignorance of the owners of the soil on the other. It is a well-known fact that no zilla in the province of Benares is without its two or three great families, wealthy, powerful, and according to native notions, respectable, whose history, if inquired into, would show how much they were indebted for the acquisition of their property to undue influence and intrigue.

Reply to Question 3, namely, What are the advantages to be expected from a continuation of the practice?—I am of opinion, that, like a monopoly, the benefits are all on the side of the few at the expense of the many; and moreover, that those benefits are highly pernicious in their effects upon the welfare of the community at large, by being in many cases perverted into a licence for the perpetration of fraud and dishonesty with impunity to the designing rogue, and to the injury and prejudice only of the ignorant and unsuspecting. Thus, for instance,

(B.) No. VI.
Respecting Lands held under Fictitious Names.

instance, the fraudulent debtor takes advantage of this facility of substituting one name for another in the documents and title-deeds which he has occasion to bring into court, to evade all risk of personal inconvenience arising from arrest and imprisonment; while it is no unusual thing in public sales, in execution of decrees, for a defendant to hire a man of straw, willing for a trifle to incur the penalty of a month's imprisonment, awarded by law for failure in making good the purchase-money, merely for the purpose of delaying the sale. This is a device which has more than once been successfully practised in my own experience; and according to my idea, affords a strong argument in favour of imposing some more severe legal penalty than at present exists. In a word, I consider the practice in question not only wholly indefensible, but attended in its practical results with nothing but unmixed evil, both as regards the interests of the State and the welfare of society; and I am confident that the interference of the Legislature to check its future progress would be hailed with joy by the great majority of the people.

Reply to Question 4.—In the event of its being determined to prohibit the practice, I do not see how the object could be more effectually and conveniently attained than by the enactment of a law rendering all lands liable to forfeiture which may hereafter be purchased under fictitious names by any parties, whether native officers of government or others; and also requiring all parties at present holding landed property under fictitious names to appear before the collector within a specified period (say six months), and give in a true and faithful statement of the *bonâ fide* proprietor's name and condition, under the penalty of forfeiting all right and title to any property so illegally held subsequent to and in contravention of the said law.

I would not, however, advocate any legislative interference whatever with the liberty of any person to dispose of his property, or make purchases in the name or names of his sons or near relatives, provided the act was free from concealment and disguise. This species of conveyance is not open to the objections above noticed, and is recommended by the following considerations:

1st. The power of selecting the best person to manage an estate and protect the interests of the family.

2d. The opportunity thus afforded of bringing forward a young expectant, and making him familiar with the management and value of the property, to the enjoyment of which he will sooner or later be entitled by inheritance.

I am, &c.

Zillah Ghazepore, (signed) *E. P. Smith,*
4 September 1837. Judge.

From *E. A. Reade,* Esq. Judge of Goruckpore, to *H. B. Harrington,* Esq. Register, N. A. N. W. P. Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of date 21st July, with its enclosures.

2. In this district it should be noted that there are 10,273 villages. This is an unusual number, and arises from the great extent of the district, and the generally small area of the properties comprised in it. I do not think, with reference to the first query, that the practice of holding lands under fictitious names is so common in this as in other districts of these provinces; because the great extent of forest and waste has given abundant opportunities for the creation of estates, and because ample encouragement has been given to all classes of the people to occupy, whether servants of the State or other people.

3. At the commencement of our rule in this district, the native officers were allowed to practise flagrant imposition, and the great majority of cases of properties held under fictitious names occurred in those days. The practice was resorted to for concealment sake, but in other cases it has obtained from other motives. A native officer who had savings to invest in land chose to insert the name of a relation, because it was his intention after his decease that the property acquired by his own success should descend to that individual, and not be left to be litigated for by other relatives, whose only claim upon him and his arose from affinity by birth. In some cases the names of others were registered, because in case of a revenue balance, or an occurrence on the property calling

for

for the interference of the police, the rentholder dreaded a personal responsibility.

4. I do not see any advantages from the practice, except, as in the last case but one noted above, it may have the effect of stopping litigation.

5. No other provision of law appears to me to be requisite than the introduction of a rule, that all those persons, servants of the State or others, who acquire by gift, deed of sale, mortgage, &c., properties, whether for a limited time or permanently, have the opportunity of registering the name of whom they please, but at the time of registering must honestly record the acquisition by whom, either in person or by attorney.

I have, &c.
(signed) *E. A. Reade*,
Collector.

Goruckpore Collectorship,
3 October 1837.

(No. 320.)

From *R. Montgomery*, Esq. Acting Magistrate of Azimghur, to *H. B. Harrington*, Esq. Register to the Nizamut Adawlut, N. W. P. Allahabad.

Sir,

I HAVE the honour to reply to your letter of 21st ultimo, transmitting certain queries from the Secretary of the Indian Law Commissioners relative to persons holding landed property under fictitious names.

Q. 1. Is the practice of holding landed property, &c. &c.?—The practice of holding landed property sold in execution of decrees of court under fictitious names was more common than it now is during the time British subjects were prohibited from holding lands in their own names. The persons who chiefly hold lands now in their own names are the native omlah and their relatives. The custom is not, however, very prevalent; and where it does exist, it is chiefly with regard to lands sold in execution of decrees of court. Only two villages have been sold for arrear of revenue during the last 12 years in this district.

Q. 2. If so, when did that practice originate?—It originated since the framing of the different regulations prohibiting the native omlah from purchasing estates sold for arrears of revenue; but this appears to be a mistaken idea as regards sales in execution of decrees of court, which do not appear to be prohibited.

Q. 3. Are there any advantages in the continuance of the practice, &c. &c.?—None whatever; on the contrary, it leads often to a great deal of litigation afterwards.

Q. 4. In case of it being determined to prevent, &c. &c.?—I think the best preventive would be to pass a law declaring that the person in whose name the estate was purchased should be acknowledged as the proprietor in case of any litigation on the subject.

I have, &c.
(signed) *R. Montgomery*,
Acting Magistrate.

Zillah Azimghur, 15 August 1837.

(No. 136.)

From *C. R. Tulloh*, Esq. Magistrate of Jaunpore, to *H. B. Harrington*, Esq. Register of Nizamut Adawlut, Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your circular, No. 783, dated 21st ultimo, received this day, annexing copy of a letter to your address from the Secretary to the Indian Law Commissioners, dated 30th June, relative to the practice of persons holding lands under fictitious names, and to reply as follows:

1st. The practice of holding lands under fictitious names exists in this district, but to what extent it is impossible for me to say, but I do not think to any great extent. Previous to the enactment of the Act authorising Europeans to hold lands in their own names, the practice was much more common, as Europeans bought and held lands in the names of others, very often in the name of one of their domestic servants.

(B.) No. VI.
Respecting Lands held under Fictitious Names.

2d. I cannot say when the practice originated, or what were the circumstances that induced it, but I suppose the practice has been in existence for many years, and the cause of it, the Regulations in force preventing Europeans and subordinate native officers from holding lands in their own name.

3d. I am not aware what advantages accrue from the continuance of the practice.

4th. This is difficult to determine, taking into consideration the great secrecy under which lands are held in fictitious names, and the difficulty in proving such to be the case; but on the whole, I think forfeiture of the lands, and a heavy fine imposed on the person or persons in whose names the lands are fictitiously bought, registered, and held, would in a great measure put a stop to the practice.

I have, &c.

Zillah Jaunpoor, 12 August 1837. (signed) *C. R. Tulloh*, Magistrate.

From *W. H. Woodcock*, Esq. Magistrate of Mirzapore, to *H. B. Harrington*, Esq. Register of the Sudder Dewanny Adawlut, Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your circular letter, No. 783, dated the 21st July last, and accompanying copy of a letter from the Secretary to the Indian Law Commissioners, No. 29, under date the 30th June 1837, relative to the practice of persons holding landed property under fictitious names.

2. The practice of holding lands under fictitious names is as common in this district as in any other.

3. The custom has arisen in several ways:

1st. Servants of government have made purchases and held land on other tenures (which they are not allowed to do by the Regulations of government) in the names of their relations and servants, who alone can be acknowledged as the ostensible proprietors.

2d. Persons of rank and wealth, who would object to appear before the several courts on various occasions, hold estates in the names of their servants, in order to avoid such inconvenient personal calls.

3d. Purchases are also made at the government sales under fictitious names, on the part of the defaulting proprietors of estates, and hence ensues a variety of roguery and litigation.

4th. There can be no real advantage or convenience in the continuance of the practice, since parties can quite as well send their mootchtar or vakeels to the courts.

5th. A positive prohibition and forfeiture of all right and title to the estate, on proof of such estate being held in a fictitious name, would, I conceive, prevent the continuance of the practice, which appears to be highly objectionable.

I have, &c.

Mirzapore, Magistrate's Office, 9 September 1837. (signed) *W. H. Woodcock*, Magistrate.

(No. 581.)

From *D. B. Morrieson*, Esq. Magistrate of Benares, to *H. B. Harrington*, Esq. Register of the Sudder Nizamut Adawlut, Allahabad.

Sir,

IN reply to your circular of the 21st ultimo, with its enclosure from the Officiating Secretary to the Indian Law Commissioners, I have the honour to state that the practice of holding landed property under fictitious names is not common in this part of the country.

2. It is, however, not uncommon for such property to be held in the name of other persons than the real owners, though such persons are not fictitious but existent. A son, a brother, a relative of any kind, and frequently a gomashtah, is the apparent or recorded proprietor, while the real one keeps himself behind the screen.

3. This

(B.) No. VI. Respecting Lands held under Fictitious Names.

3. This is a long old practice, and I imagine that it arose when the country was in an unsettled state, with no permanent government, or one which had neither the confidence nor the good wishes of the community. In such a state of things persons would not be desirous of making any show of wealth or possessions, as it would only expose them to greater hazards, and the custom once having taken root, there will be difficulty in overcoming it. I am of opinion, however, that it is on the decline. At sales in the collector's office here, I have rem arked that mny purchase in their own names, or if they be gomashtahs or agents, they state the name of the party on whose behalf the bargain is made.

4. There are no advantages attending this practice; on the contrary, it enables fraudulent persons to cheat with greater ease, and to set both their creditors and the law at defiance. It is therefore desirable that the practice be put a stop to, but I confess that I do not see how any special enactment can be of any avail. I am of opinion that the practice will of itself decline, and in proportion as the respect and consideration attending on the possession of landed property shall increase, the less inducement will there be for concealing the name of the real proprietor.

I have, &c.

Magistrate's Office, City of Benares, 14 August 1837. (signed) *D. B. Morrieson*, Magistrate.

(No. 362.)

From *W. Hunter*, Esq. Officiating Magistrate of Ghazeepoor, to *H. B. Harrington*, Esq. Register to the Sudder Dewanny and Nizamut Adawlut, N. W. P. Allahabad.

Sir,

In reply to your circular letter, No. 783, dated the 21st July 1837, forwarding copy of a letter from the Officiating Secretary to the Indian Law Commission, I have the honour to return the following replies to the queries therein contained:

1st. I believe the practice of holding lands under fictitious names is common in the district under the jurisdiction of this court.

2d. It is difficult to say when the practice may have originated, but I consider the circumstances which must have chiefly led to induce it to have been the acquisition of large sums of money by improper means, and a desire to lay such money out advantageously in the purchase of landed property without the offenders exposing themselves.

3d. I am not aware of any advantages.

4th. I know of no measures which could be taken to prevent the continuance of this practice, besides that of rendering lands acquired by such means liable to forfeiture; I fear even this, however, would not prove effectual.

2. I beg to remark, that having had charge of this district only for a few days, the above remarks are more dictated by general experience than by a knowledge of how far the practice prevails in this particular district.

I have, &c.

Zillah Ghazeepoor, Magistrate's Court, 14 September 1837. (signed) *W. Hunter*, Officiating Magistrate.

(No. 272.)

From *C. Fraser*, Esq. Commissioner for the Saugor Division, to *H. B. Harrington*, Esq. Register Nizamut Adawlut, Allahabad.

Sir,

I have the honour to acknowledge the receipt of the Court's circular, No. 783, dated the 21st July last, relative to the practice "of persons holding landed property under fictitious names," and to state in reply, that as no such proprietary rights have been recognised in these territories as vested in the subject, the queries of the Judicial, Criminal.

(B.) No. VI.
Respecting Lands held under Fictitious Names.

Law Commission would not appear to call for any reply from me; but I consider the practice to be an objectionable one, and think that it should continue to be discountenanced.

I have, &c.
(signed) *C. Fraser*,
Officiating Commissioner.

Jubulpore, Commissioner's Office,
21 October 1837.

(No. 83.)

From *M. Smith*, Esq. Officiating Political Assistant Commissioner, Saugor, to *H. B. Harrington*, Esq. Register Sudder Dewanny Adawlut, N. W. P. Allahabad.

Sir,

Judicial.

I HAVE the honour to acknowledge the receipt of your circular, No. 783, with its enclosure, and in reply to the queries of the Law Commissioners therein contained, I beg to state that in this territory the proprietorship of the soil having been pronounced to belong to government, the practice of holding land under fictitious titles does not exist in this district, and as regards the temporary leases of farms, is generally discontinued, as inconvenient and irregular.

I have, &c.
(signed) *M. Smith*,
Officiating P. A. C.

Saugor, Office of the P. A. C.
14 August 1837.

(No. 315.)

From *R. Low*, Esq. Political Assistant Commissioner, Jubulpore, to *H. B. Harrington*, Esq. Register to the Court of Sudder Dewanny Adawlut, Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your circular letter, No. 783, of the 21st ultimo, with copy of a letter from the Officiating Secretary to the Indian Law Commission, dated 30th June last.

In reply to the several queries therein contained, I beg to state,

1st. The practice of holding landed property under fictitious names is not common in the district under the jurisdiction of my court, or rather I should say it is almost unknown.

2d. The only instances of the kind I have known, are those in which persons who have been appointed to the situation of tuhseeldars (when they are prohibited from holding villages in malgoozaree) continued to hold villages which they were possessed of before under fictitious names, or rather in that of one of their own children or relations; but I have known no instances of such persons taking new villages under any such fictitious names.

3d. There are no particular advantages in the above practice, neither are there any disadvantages in the few instances that may occur; nor do I conceive any prohibition necessary further than what already virtually exists here, viz. that no native officers shall take villages or lands under any fictitious names.

This question has been answered in a great measure in the above one, but as the state of things to which these questions refer, so common in the Regulation Provinces, does not prevail in this district, I conclude my opinion on the subject is not required.

I have, &c.
(signed) *R. Low*,
Principal Assistant to Commissioner.

Jubulpore, Office of the P. A.
28 August 1837.

(B.) No. VI.
Respecting Lands held under Fictitious Names.

(No. 130.)

From *C. Browne*, Esq. Officiating First Junior Assistant, Seonee, to *H. B. Harrington*, Esq. Register of Nizamut Adawlut, Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your letter of the 21st July, and in reply to the questions proposed, beg to state that the practice of persons holding landed property under fictitious names does not exist in this district; such being the case, any further observations on my part, I presume, are unnecessary. Revenue.

I have, &c.

Seonee, Office of 1st Junior Assistant, 5 September 1837.

(signed) *C. Browne*,
Officiating 1st Junior Assistant.

(No. 17.)

From *R. Doolan*, Esq. Officiating First Junior Assistant, Dummow, to *H. B. Harrington*, Esq. Register Nizamut Adawlut, N. W. P. Allahabad.

Sir,

I HAVE the honour to acknowledge the receipt of your circular letter, No. 783, of the 21st July last, with enclosure from the Officiating Secretary to the Law Commission, of the 30th June, requesting my opinion on several points connected with the practice of holding lands under fictitious names which prevails in this country. Judicial, Miscel.

2. In reply, I beg to inform you, that as in these countries the sole proprietary right in the soil is vested in government, the land is farmed on temporary leases, or granted rent-free in particular instances for charitable purposes and the like, still reverting to government at the death or rejection of the farmer or grantee; and that consequently no sales of land ever take place, so as to allow a subordinate judicial officer or others to obtain and hold an estate under a fictitious name.

3. It sometimes happens that a farmer engaging with government is anxious to substitute for his own name in the lease that of a dependant or distant relation, whilst he himself remains *de facto* the manager and the responsible person for the punctual realization of the revenue; but this practice is always discouraged, and indeed rarely takes place; and if allowed for any particular reason, is always done with the knowledge of, and concurrence of the settling officer.

I have, &c.

Dummow, 1st Junior Assistant Office, Camp Retlee, 4 Sept. 1837.

(signed) *R. Doolan*,
Officiating 1st Junior Assistant.

(No. 106.)

From *M. C. Ommany*, Esq. Junior Assistant Commissioner, Baitool, to *H. B. Harrington*, Esq. Register to Nizamut Adawlut, Allahabad.

Sir,

I HAVE the honour to acknowledge the Court's circular, No. 783, dated 21st July, accompanying a copy of the Indian Law Commissioners' Secretary's letter, No. 29, dated 30th June, submitting certain questions on which the Court desire my opinion.

Question 1. The practice does not obtain in this district, further than that fathers hold lands in the name of their sons or near relatives.

Question 2. No reply is requisite.

Question 3. I cannot see advantages of such a practice, but as the system is not in operation in this district, I may not have sufficiently attended to the subject.

Question 4. As it is not the practice here to hold property under fictitious names, I need not moot an opinion as to the provisions necessary for its discontinuance. I believe the persons who practise this system are generally officials; but in this district servants to government hold lands in their real and undisguised names. One tuhseeldar was a considerable landholder, and was raised for his

(B.) No. VI.
Respecting Lands held under Fictitious Names.

good reputation to the important post he now fills. His villages have been continued to him, and I am not aware of any mischief that has arisen in consequence of this cause, and that this indulgence has at all affected his character as a public servant. If the system does obtain I am unaware of it, but it can only exist in the case of Government officers.

I have, &c.

Baitool, Office of Junior Assistant Commissioner, 6 Sept. 1837.

(signed) *M. C. Ommany*,
Junior Assistant Commissioner.

(Revenue Department.)

Legis. Cons. 1840, 23d Nov. No. 20.

From *P. B. Smollett*, Esq. Secretary to the Revenue Board, Fort St. George, to the Secretary to the Law Commissioners, Calcutta.

Sir,

Para. 1. THE Board of Revenue having placed themselves in communication with the several collectors under this presidency on the questions discussed in Mr. Grant's letter of the 30th June 1837, I am now directed to reply to the several points on which their opinion has been required in the letter under acknowledgment.

2. The practice of holding landed property under fictitious names obtains to a greater or less extent in every district under this presidency. It has prevailed from a remote period, and is not simply confined to the holding of landed tenures, but is equally observed in almost every transaction in which natives engage in daily life. Rents of villages, of custom duties, of abkarry, are most frequently taken in fictitious names, usually that of a dependant, the real party being most commonly the surety of the nominal principal, and this is frequently done with the knowledge and concurrence of the local officers, the circumstances being perfectly understood throughout the district. In the Northern Circars it rarely happens that a large estate is purchased or held under a fictitious name; but in ryotwary districts the puttahs for land held by parties in government employ, of individuals of superior caste and family and of others, are very frequently in the names of relatives or dependants, who do not really enjoy the profits of the land.

3. The motives that have led to this practice are various: servants in public employ resort to it, to avoid the trouble of public registry and application for permission to hold land, as well as the charge of having used undue influence or improper means in obtaining possession of it; moreover, by registering the lands in the name of another, they escape the trouble and discredit of squabbles and disputes, and the necessity of attendance before the subordinate talook authorities for their settlement, as also numerous annoyances connected with the collection, and responsibility for the Circar share of the produce, the furnishing of returns, estimates of crop, and other matters; labours which parties of respectability desire to escape, by inducing a dependant or relative to undertake them by having the lands registered in their names.

4. There are no public advantages in the continuance of the practice; it is the comfort and convenience of individuals that leads in a great measure to its prevalence under this presidency, and doubtless, in some instances, a desire in the parties resorting to it to place their property beyond the reach of creditors or court process. But upon the whole, no practical inconvenience is found to result, as regards the ordinary collection of the revenues, under the system as it exists on this side of India; and the Board are averse to the change of law contemplated, or to the introduction of an enactment for rendering all lands held under fictitious names liable to forfeiture, both because there is no apparent necessity for the law, and because it seems to them that its enforcement would in all likelihood involve the local authorities in constant litigation.

5. It is proper to add, with reference to the observations contained in para. 3 of this letter, that under local regulations in force in this presidency, the purchase of lands by native servants in the provinces in which they serve, whether by public sale

(B.) No. VI.
Respecting Lands held under Fictitious Names.

sale or private bargain, is strictly prohibited, except under special authority by the Board of Revenue, submitted through the collector of the district.

I have, &c.

Revenue Board Office, Fort St. George, 25 April 1839.

(signed) *P. B. Smollett*, Secretary.

(No. 1143, of 1838.—Territorial Department, Revenue.)

From *T. Williamson*, Esq. Revenue Commissioner of Poonah, to *J. P. Grant*, Esq. Secretary to the Indian Law Commissioners, Calcutta.

Legis. Cons. 1840, 23d Nov. No. 21.

Sir,

I HAVE the honour to acknowledge the receipt of your letter, No. 35, dated the 30th June last, containing queries on the subject of landed property being acquired or held secretly by subordinate judicial officers under feigned names.

2. In reply to the first query, as to whether the practice of holding landed property under fictitious names is common in the provinces under my jurisdiction, I beg to state that instances of land continuing to stand in the names of parties long dead are frequent in some districts; that it is not unusual at all for a man to hold land in the name of his deceased father, and that occasional instances are met with of men taking land in the name of an infant child or younger brother, and sometimes of a servant or other dependant.

3. With regard to the second query, as to when the practice originated, I cannot afford any precise information. It appears to have been the custom under the Mahrattas; but as the information regarding these provinces previous to their supremacy being established is very meagre, I cannot say whether the practice may not have been much more ancient.

4. The circumstances that induced it are various. When the person in whose name the land stands has long been dead, custom is the only reason generally alleged. Some natives appear to have a superstitious feeling about holding the land in their fathers' names, as some soucars always keep their books in the name of their deceased parent. The general reason for entering the land in the name of an inferior is, that where the superintendence of the local government authorities is lax, the real holder may be enabled to enjoy the produce of land, the obligation to pay the revenue of which rests with an apparent pauper, who may be allowed to leave an unpaid balance of revenue, which, if the fraud be not discovered, is frequently ultimately remitted.

5. With respect to the third query, I know of no advantage attending the custom.

6. Referring to your 4th question, I beg to state that I am not aware of any inconvenience resulting from the practice, for the correction of which any fresh legislative enactment is necessary. If the land is rent-free, it is always in government's power to resume it, should it be found that any but those who are legally entitled to it enjoy it; and if not rent-free, as far as government is concerned, no loss of revenue can, under ordinary circumstances, and in a well-managed district, ensue. From the tenor of your letter, however, I am led to believe, that owing to some difference, either in local usages or laws, the system of holding land under feigned names is found to be more objectionable than I have reason to believe it is in this presidency.

I have, &c.

Revenue Commissioner's Camp, Poonah District, Ambeh, 18 May 1838.

(signed) *Thos. Williamson*, Revenue Commissioner.

(B.)No. V. Respecting Lands held under Fictitious Names.

Legis. Cons. 1840, 23d Nov. No. 22. Revenue.

(No. 48.)

From *H. Elliot*, Esq. Secretary Sudder Board of Revenue, Allahabad, to *J. P. Grant*, Esq. Officiating Secretary to the Indian Law Commissioners, Fort William.

Sir,

I AM directed by the Sudder Board of Revenue, N. W. Provinces, to acknowledge the receipt of your letter, No. 33, dated the 30th ultimo, requesting their opinion on the practice obtaining in these provinces of persons holding landed property in fictitious names; and, in reply, to communicate the following observations:

Q. 1st. Is the practice of holding landed property under fictitious names common in the provinces under the jurisdiction of your Board?

2. Upon this question the Board observe that it cannot be called a common practice, but there have been instances of it among three classes of persons:

First. Natives of so high a rank, that they would feel themselves degraded by being subjected to the orders and processes of the revenue officers, as the Nuwab of Banda, who has been in the habit of holding lands in the name of a chela or mumlook.

Secondly. Native officers of revenue, who are prohibited from acquiring lands by purchase at public auction, but who do buy, or have bought, such lands, and held them under feigned names. There is an obvious objection to these persons being allowed to buy at auction, as they may be tempted to intrigue to bring a property into arrear with a view to acquiring it.

Thirdly. European British subjects who were prohibited by law from holding lands either on lease, sale, or mortgage, but who did hold them under feigned names in all these modes.

2d. If so, when did that practice originate, and what were the circumstances that induced it?

3. The reply to the second question is contained in the replies to the first.

3d. Are there any advantages in the continuance of that practice, and if there be, what are those advantages?

4. There do not appear to be any advantages. In the first case, the practice is founded on a prejudice, in the second, on a fraud, and in the third case, the alteration in the law has rendered the practice unnecessary.

4th. In case of it being determined to prevent the continuance of that practice, what provisions of law would most surely and conveniently, and with least risk of injustice to individuals, effect *that object?*

5. The best remedy would seem to be, to direct that all claims brought before any public authority, by or in behalf of the real owner, or on the ground of a title derived from him, to recover lands held under a feigned name, be rejected.

Due notice must of course be given to allow all persons so circumstanced to declare themselves. A year's notice for this purpose should be sufficient, and all suits or claims not brought within that time should be barred. The natives of highest rank require some indulgence in the mode of transacting their business with the revenue officers, which might be allowed.

I have, &c.

Sudder Board of Revenue, Allahabad, 25 July 1837.

(signed) *H. Elliot*, Secretary.

ABSTRACT.

Reply to No. 33, of 30th June, submitting Board's replies to the questions regarding the holding of land in the N. W. Provinces in fictitious names. Board think that practice should be discontinued, and suggest a method.

The foregoing papers require no order.

— (B.) No. VII. —

ON THE PETITIONS OF THE EAST INDIANS AND ARMENIANS.

To the Right honourable the Earl of *Auckland*, G.C.B. Governor General of India in Council.

WE have now the honour to report upon the substantive law to which we think all persons in the Mofussil not subject to Hindoo or Mahomedan civil law should be subject.

On the 15th of November 1836, the government of Bengal sent to the Supreme Government, to be forwarded to the Law Commission, an extract from a despatch of the Honourable Court of Directors, and other papers, connected with certain complaints of the East Indians, and their petition to Parliament. Mr. Secretary Mangles, in his letter of the 17th December 1836, forwarded the same to the Law Commission, to be considered in their proper place.

Of the many subjects to which these papers relate there are three which, as belonging to jurisprudence, and as being very important, appear to be peculiarly deserving of our consideration:

1. The uncertain condition of the petitioners, as regards civil law.
2. Their subjection to Mahomedan criminal law.
3. The subjection to criminal courts constituted according to Mahomedan principles, or at any rate not constituted according to principles acceptable to Christians of British descent.

The second of these questions we consider to be disposed of so far as regards the Law Commission, by the proposed penal code; and upon the third we propose to report separately. The present report will therefore treat only of the first.

Among the papers referred to us is a letter from Mr. Advocate-general Pearson, dated 21st February 1832, addressed to Mr. Deputy Secretary Thomason, in answer to one enclosing the draft of a Regulation intended to provide for the case of the East Indians. The third paragraph of Mr. Pearson's letter is as follows:

"The first difficulty which occurs to me on the subject, and which indeed pervades the whole of it, is the want of some definition of the class of persons to whom the Regulation is meant to apply, the consequent difficulty in determining who are properly East Indians, and in what distance from the pure European blood this character is to be found. By the general law of England all children (even those who are born out of the king's liegeance) whose fathers were natural-born subjects, are subjects themselves, and I apprehend that if an English subject marries a woman of mixed European and Asiatic race, their children would be English subjects to every intent and purpose. If so, the mere shade of colour or complexion would be no criterion as to those who are the objects of the Regulation. I conceive that difficulties of a like nature must have arisen in all countries where the application of a law was limited by the lineage of individuals rather than by the boundaries of the territories they inhabited. But in this country the difficulty would be greater than in any other, on account of the difference in the legal situation of the parties, from the circumstance of the legitimacy or illegitimacy of their birth, and whatever may have been their subsequent intermarriages with each other, the difficulty of discovering whether the first East Indian parents were the offspring of wedlock or not. I would also observe, that it is not said whether under the general denomination of East Indians, that mixed race of persons who are usually styled Portuguese, are meant to be included."

The difficulty thus pointed out by Mr. Advocate-general Pearson is no doubt a considerable one. We are, however, persuaded that it is, with reference to the present purpose, a purely gratuitous one; because we believe that for the remedy

(B.) No. VII.
Petitions of East Indians and Armenians.

of the practical grievance of which the petitioners complain, no other definition is necessary than the simple negative one of not being Hindoos or Mahomedans, a definition common to the East Indians with British subjects, Armenians, Portuguese, Frenchmen, and many others.

In considering what ought to be done towards satisfying the claims thus put forward by the East Indians, it appeared to us that our first duty was to consider carefully what now is, or ought to be, according to recognised principles, the legal condition of these petitioners; and as no special legislative provision has been made for them, the answer to this question must necessarily be an answer to the more general and surely very important question, what is the law to which all persons in British India for whom no special provision has been made, or who are not excepted on account of special circumstances, are subject? or, in other words, what is the *lex loci* of British India?

This is a question which we believe has never been fully discussed, perhaps has never been steadily looked at; it forced itself upon our attention in the course of our investigations into the slavery of this country, but we thought the detailed examination of it more appropriate to this place, and therefore have contented ourselves with referring to this report in that which we have prepared upon slavery.

The common opinion, at least among those who think that there is any *lex loci*, seems to be that the Mahomedan law, in all the countries which were subject to the Mogul Emperors, is the *lex loci* of those countries, and that the Hindoo law is the *lex loci* of those territories which were never brought under that subjection.

And this opinion, besides being the common one, has also the advantage of being deducible from a principle supported by very high authority.

We are disposed to think, however, that neither the Hindoo nor Mahomedan law can be considered as the *lex loci* of any part of British India. They seem to us to be in their own nature incapable of performing the function of a *lex loci*. The doctrine that the laws of a country remain in force until they are altered by the conqueror, and bind all persons in the country, must, we apprehend, receive some limitation when that law is in its own nature so utterly inapplicable to strangers, as are the Hindoo and Mahomedan systems.

We bear in mind that the doctrine laid down in Calvin's case, 7th Reports, with regard to the conquest of an infidel kingdom, is treated by Lord Mansfield, in the case of Campbell *v.* Hall, Cowp. 204, as an absurd exception, which in all probability arose from the mad enthusiasm of the Crusades; and that in the same case Lord Mansfield lays it down as too clear to be controverted, "that the law and legislative government of every dominion equally affects all persons and all property within the limits thereof, and is the rule of decision for all questions which arise there." "Whoever," he further says, "purchases, lives, or sues there, puts himself under the law of the place. An Englishman in Ireland, Minorca, the Isle of Man, or the Plantations, has no privilege distinct from the natives." And if this doctrine of Lord Mansfield is to be taken for law in all its generality, then it will no doubt follow that a European foreigner, an East Indian, an Armenian, every one, in short, who is not saved from such a consequence by some special legislative provision of the British Government, is subject to Hindoo or Mahomedan law accordingly as he is situated in a part of British India in which the Mahomedan law has or has not superseded the Hindoo, or been in its turn superseded by it.

But notwithstanding the great authority of Lord Mansfield, we cannot help thinking that a distinction must be made in such cases as the conquest of a Hindoo or Mahomedan nation. The distinction, however, which we should venture to suggest differs somewhat from that which Lord Mansfield has pronounced absurd.

The distinction pronounced by Lord Mansfield to be absurd is thus stated in Calvin's case: "But if a Christian king should conquer a kingdom of an infidel, and bring them under his subjection, then *ipso facto* the laws of the infidel are abrogated, for that they be not only against Christianity, but against the law of God and nature contained in the Decalogue; and in that case, until certain laws be established amongst them, the king by himself, and such judge as he shall appoint, shall judge them and their causes according to natural equity, in such sort as kings in ancient times did with their kingdoms before any certain municipal laws were given, as before hath been said."

That the Hindoo and Mahomedan laws were abrogated, *ipso facto*, when the king

king of Great Britain* brought these countries under his subjection, we admit to be an absurd doctrine; but it is one thing to say that the Hindoo and Mahomedan laws did not cease upon the conquest to bind Hindoos and Mahomedans, and another thing to say that these laws continued after that event to bind all Christians and others as long as they abide in this country. And with great diffidence and hesitation we are inclined to adopt only so much of Lord Mansfield's doctrine as will support the first of these propositions, rejecting that portion of it from which the last of them is deducible; that is to say, we are inclined to think that the Christian subjects of the British Crown, and of other nations coming into British India, indeed all persons in British India not being Hindoos or Mahomedans, are, independently of all statutes, charters, and treaties, exempt from the operation of the Hindoo and Mahomedan laws.

It is possible to conceive that a nation not Christian should have a system of law which might without flagrant inconvenience be applied to Christians; such was the system of law existing in the Roman empire before the reign of Constantine the Great; but the Hindoo and Mahomedan laws are certainly not such systems; they are so interwoven with religion as to be unfitted for persons professing a different faith. The Hindoo and Mahomedan religions are not part and parcel of the law, but the law is part and parcel of the Hindoo and Mahomedan religions. The character of a *lex loci* seems therefore to be utterly unsuited to the genius of such systems.

With regard to the Hindoos, we believe that they do not themselves consider their laws as the laws of any country, but as the laws of the people who are Hindoos by birth.

Sir Edward Hyde East, in his evidence before the Select Committee of the House of Lords, speaking of the term "Gentoos," in the Charter of the Supreme Court, says, "Whether that was intended to comprehend all other descriptions of Asiatics who happened to be located within the British bounds in India, is perhaps very difficult to be told at this time of day; and there is this singularity in the Hindoo law, that when any Asiatics, such as Sikhs, Parsees, Chinese, and so on, come and settle in India, they bring with them, as it is understood, their own civil laws in many respects, such as of marriage, succession, &c. This is the general spirit and understanding of the Hindoo law; so that all questions of marriage, which in most other countries in the world is a question of local ceremony, and to be governed by the law of the country, and modes of adoption, and various other matters, are regulated by their own particular customs which they bring with them."

Sir Edward East endeavours to account for the state of things he has been describing, thus:

"It is a singular state of things, arising probably from the circumstance that India has been so frequently overrun by different classes of conquerors and settlers."

To us, however, it appears most naturally to arise out of the fact that the Hindoos look upon their law as part of their religion, with which an Armenian or a Chinese living in Hindustan has no more to do than a guest in a Benedictine or Franciscan monastery has to do with the rules of those religious orders †.

There is sufficient evidence that this is the light in which the Hindoos themselves look upon their own law; they are perfectly tolerant of other laws as of other religions; they are even more than tolerant, for they look upon the diversities of laws and religious prevailing among mankind as a beautiful dispensation of Providence, which would be marred by the conversion to Hindooism of those who are not born Hindoos.

The learned Bramins who compiled the code of Hindoo laws, translated by Mr. Halhed,

* The Statute 53 Geo. 3, c. 155, assumes in its preamble the undoubted sovereignty of the Crown.

† It is obvious that, even though the doctrine in the text should be admitted in its fullest extent, it would nevertheless frequently happen that persons living in a country subject to a Hindoo government would be liable, though not belonging to that religion, to have the purely penal or burdensome parts of that law applied to them. A Christian or a Mahomedan living under a Hindoo government might be punished for a crime, or compelled to pay a debt or a tax according to Hindoo law, not because he was entitled to have that law administered to him, but because somebody else was entitled to insist upon its being administered to him.

(B.) No. VII.
Petitions of East Indians and Armenians.

Halhed, express themselves in their preliminary discourse to that work, as follows:

"He (the Supreme Being) appointed to each tribe its own faith, and to every sect its own religion; and having introduced a numerous variety of castes, and a multiplicity of different customs, he views in each particular place the mode of worship respectively appointed to it; sometimes he is employed with the attendants upon the mosque in counting the sacred beads; sometimes he is in the temple, at the adoration of idols; the intimate of the Mussulman and the friend of the Hindoo; the companion of the Christian, and the confidant of the Jew. Whereupon men of exalted notions, not being bent upon hatred and opposition, but considering the collected body of creatures as an object of the power of the Almighty, by investigating the contrarieties of sects, and the different customs of religion, have stamped to themselves a lasting reputation upon the page of the world, particularly in the extensive empire of Hindustan, which is a most delightful country, and wherein are collected great numbers of Turks, of Persians, of Tartars, of Scythians, of Europeans, of Armenians, and of Abyssinians. And whereas this kingdom was long the residence of Hindoos, and was governed by many powerful roys and rajahs, the Gentoo religion became catholic and universal here; but when it was afterwards ravaged in several parts by the armies of Mahomedanism, a change of religion took place, and a contrariety of customs arose, and all affairs were transacted according to the principles of faith in the conquering party, upon which perpetual oppositions were engendered, and continual differences in the decrees of justice; so that in every place the immediate magistrate decided all causes according to his own religion; and the laws of Mahomed were the standard of judgment for the Hindoos."

Bengal and Behar.

This shows, we think, that a country conquered from a Hindoo sovereign is not within the principle laid down by Lord Mansfield, in the case of Campbell *v.* Hall. We are not driven to contend that it is an exception which he would have made if his attention had been called to the grounds of it, for neither the words nor the spirit of his main proposition include such a case. His main proposition is, that whoever purchases, lives, or sues in any country, puts himself under the law of the place; and throughout his judgment it is assumed that there is some law of the place; now in a country subject to a Hindoo sovereign there is no law of the place *.

In confirmation, we may observe, that the Christians of St. Thomas are said to have acknowledged a Gentoo sovereign, but to have been governed, even in temporal concerns, by the Bishop of Angamala.—*Vide* Gibbon, vol. 8, p. 347.

The unfitness of the Mahomedan law to be the *lex loci* of a country subject to a government not Mahomedan, depends upon somewhat different considerations. In this case, as well as the case of Hindoo law, the unfitness is the consequence of the indissoluble union of law with religion; but there is this remarkable difference between the cases, the Hindoos, in consideration of this intimate union, hold that even in a country governed by their own princes, their own law, being the word of God addressed specially to the Hindoo race, is not the law of the place, but the law of the Hindoo inhabitants. The Mahomedans draw a quite different inference from the identity of their law and religion; and hold that their law, being the word of God, addressed generally to all mankind, is not only the *lex loci* of countries subject to Mahomedan sovereigns, but ought to be the law of the whole world. In accordance with this principle, they hold that, upon the acquisition of any country by a Mahomedan prince, their law becomes the *lex loci*, not at the discretion of the prince, but as a matter of strict law and religion; and also, that when their law has once been introduced it can never be lawfully superseded by any other system.

In Colonel Galloway's observations on the law and constitution of India, the question is discussed whether or not the Mahomedan law has superseded the Hindoo. He decides that it has; and the grounds of his decision bear directly upon the more general question which we are considering. Colonel Galloway, it will be observed, justifies his statements by Mahomedan authorities; and

* By saying that there is no law of the place, we mean that there is no law which would be enforced upon any strangers where no interests but their own are concerned, and where there is nothing to lead to the inference that they meant of their own accord to adopt the law by which the Hindoo inhabitants are bound.

and as far as our inquiries go, he is quite correct in all that relates to this subject. "We cannot believe," he says, "that a Moslem who had the power, even the legal power, to exterminate the Hindoos as idolaters, would have the will to adopt and to administer their law and constitution, and to subject his Moslem conquerors to it. It is impossible to suppose that a Moslem by exercising would contribute to the permanence of the laws and constitution of an idolatrous and conquered people. The Mahomedan prince who should have attempted this, would, by the sacred law of his Saviour, have subjected himself to the pains of apostacy; and by the ordinary laws of the human mind, to the contempt and execration of those in whom alone he was powerful.

"During the whole period of the Mahomedan history in India, though we have seen that Hindoos were employed even at the head of other departments, we have never heard of a Hindoo judge; and assuredly no Mahomedan kazee could ever have been found to administer the laws of Menu."

After a few more observations, he continues, "This much for the probability of the case. Let us see what the law of the conquerors is.

"By the Mahomedan law, the Daur-ool-hurb, as a foreign province, becomes the Daur-ool-Islam, that is, becomes annexed to the Mahomedan dominions by the mere act of conquest, and the exercise of even a part of the law of Islam in it.

"That country is the Daur-ool-Islam," says the Jaumeea-oor-Ramooz, "in which the laws of the Moslemeen prevail;" and, adds the same writer, "it is stated by Zanhedee that, according to the unanimous opinion of the learned, the Daur-ool-hurb becomes the Daur-ool-Islam by the exercise of even some of the laws of Islaum in it. Profession of the Mahomedan faith on the part of the inhabitants is not a condition. Therefore, by the Mahomedan law, India undoubtedly was the Daur-ool-Islam, nay, is held by law to be so now; for it is not a necessary condition that the sovereign be a Moslem. If then by law the empire of India, by virtue of the Mahomedan conquest, became the Daur-ool-Islaum, that is, a part of the Mahomedan dominions, it would have been absolutely contrary to law, even an heresy in its most formidable shape, to have suffered any law or constitution to exist in India but that of Islaum. Every law, even private right and interest, which existed in the country prior to the conquest, by that act alone perished."

After some further details, Colonel Galloway thus sums up: "This is the Mahomedan law of conquest; and it is mandatory, and not optional, to establish the law of Islaum within the Mahomedan dominions."

The same doctrine is clearly implied in the 2d chapter of the 9th book of the Hedaya, entitled, "Of the Manner of Waging War."

The chapter begins thus: "When the Mussulmans enter the enemy's country, and besiege the cities or strongholds of infidels, it is necessary to invite them to embrace the faith, because Ibn Abbas relates of the Prophet that, 'He never destroyed any without previously inviting them to embrace the faith.' If, therefore, they embrace the faith, it is unnecessary to war with them, because that which was the design of the war is then obtained without war. The Prophet, moreover, has said, 'We are directed to make war upon men until such time as they shall confess there is no God but one God; but when they repeat this creed, their persons and properties are in protection.' If they do not accept the call to the faith, they must then be called upon to pay jizyat, or capitation tax; because the Prophet directed the commanders of his armies so to do; and also because by submitting to this tax war is forbidden and terminated, upon the authority of the Koran. If those who are called upon to pay capitation tax consent to do so, they then become entitled to the same protection, and subject to the same rules as Mussulmans, because Alee has declared, 'Infidels agree to a capitation tax only in order to render their blood the same as Mussulman blood, and their property the same as Mussulman property.'"

The Mahomedan law, then, repudiates the doctrine laid down in the case of Campbell *v.* Hall, respecting the effect of conquest upon the existing law of the conquered country, in both its branches. In the case of a conquest made from a Mahomedan prince it does not admit the right of the conqueror to change the law. In the case of a conquest made by a Mahomedan prince, it does not admit that the law established in the country continues to bind all persons within it till altered by the new sovereign, but insists that the conquest abolishes that law, *ipso jure*. This last proposition, it may be observed, contains the very same doctrine as that laid down

(B.) No. VII.
Petitions of East Indians and Armenians.

by Lord Coke respecting a conquest by an English prince, and which Lord Mansfield justly stigmatised as absurd. But though the doctrine is the same, the root by which it inheres in the system it belongs to, is widely and essentially different. The English law, as it does not profess to be a revelation from God, may be changed by Parliament in the way of legislation, and by the courts of law over-ruling antiquated doctrines, as we see it has been changed by Lord Mansfield in this very article. But the Mahomedan law not being, so far as regards its fundamental principles, the creation of a legislature, nor of judicial decisions, but assuming to be the revealed commands of God, is, upon its own fundamental principles, absolutely immutable A Mahomedan Lord Coke would be a saint: a Mahomedan Lord Mansfield a heretic or an apostate. Another diversity of consequences flowing from this difference is that, whereas an English conquest of a Mahomedan country leaves the void caused by the abolition of Mahomedan law to be supplied by mere natural equity, a Mahomedan conquest of any non-Mahomedan country not only subverts the established law, but, *uno flatu*, sets up the Mahommedan law in its stead.

The doctrine laid down in the case of Campbell *v.* Hall is admirable as a part of the public law of nations, who can act upon it reciprocally. If the French conquer an English settlement, the English law continues to be the *lex loci* until it is altered by the French government; and therefore it is not unfitting that if the English conquer a French settlement, the French law should continue in like manner until the English government should think fit to change it. But if a Mussulman prince should conquer an English or French settlement, the English or French law is *ipso jure* utterly abolished. The prince himself cannot save it from abolition. If he were to attempt it, he would be guilty of heresy, and his judges would be bound to disobey his commands.

All these considerations impress us with the belief that if Lord Mansfield had been called upon to decide a case arising in a country conquered from or ceded by a Mahomedan power, and had been pressed by these or similar arguments, he would have been disposed, in over-ruling Lord Coke's doctrine, to have limited the continuance of the Mahomedan law to the Mahomedan population, who alone would suffer from the fanatical injustice which he was seeking to remedy. His doctrine in the case of Campbell *v.* Hall was, so far as regards Mahomedan countries, extra-judicial, not being called for by the circumstances of the case. And it is no disparagement of this great magistrate to say that this, like many extra-judicial dicta, is found to be susceptible of amendment, when instead of being considered only as part of a more general proposition, it becomes the direct and principal object of attention, and suggests to the understanding the specialities which may distinguish it from the other cases of that more general proposition.

But even if we waive this objection, and admit, for the sake of argument, that the Mahomedan law is not to be excluded from the privileges conferred by the rules of international jurisprudence, because it denies the authority of those rules, and refuses to be bound by them, other unanswerable reasons remain why it cannot be recognised by any but Mahomedan jurists as the *lex loci* of a country in which the ruling power is not Mahomedan.

The reasons we speak of are drawn from the manner in which persons not of the faith are treated by that law.

The Mahomedan law divides the people into Mussulmans, Zimmees, and Mustamins.

Zimmees are infidel subjects, that is, infidels who have submitted to the capitation tax.

Mustamins are infidel aliens. Their condition is thus described in the Hedaya, vol. 2, p. 196:—

"If an alien come, under protection, into a Mussulman territory, the Imam must not suffer him freely to reside there for the complete term of a year, but must give him notice that 'if he should remain the full year, he will impose jizyat (capitation tax) upon him.' The reason of this is, that an alien is not to be allowed to continue in a Mussulman territory for any considerable space of time, except in slavery, or in consideration of paying the capitation tax; if he continue in the Mussulman territory for a whole year, he becomes a Zimmee or subject; because when he remains a year in the Mussulman territory, after the Imam's notice to him, it is known that he undertakes to pay capitation tax, and he becomes a subject of course."

If, then, the Mahomedan law is still the *lex loci* of British India, all the Europeans

Europeans in the Mofussil, including the British themselves, must be considered as Zimmees, for in no other capacity could Mahomedan law be administered to them. That it is impossible for any government, not itself Mahomedan, to consider them as Zimmees, is, we suppose, sufficiently evident from what has been already stated; but the absurdity of such a proposition will become still more manifest if we look at the legal disabilities of a Zimmee.

No Zimmee can be a judge in a Mahomedan tribunal.

Colonel Galloway, in the sequel to the passage we have already quoted from him, says, "Even questions of inheritance among non-Moslem subjects, as I have before stated, are not left to the decision of any other than a Moslem tribunal, but must be decided according to the Mahomedan law, and by Moslem judges; for every judge must be a Moslem, as is stated by all writers on the law."

"The authority of a kazee is not valid," says the Hedaya, "unless he possess the qualifications necessary to a witness; that is, unless he be free, sane, adult, a Mussulman, and unconvicted of slander."

Professor Horace Wilson infers, from Mr. Orme's making an assertion inconsistent with this doctrine, that he "must have been exceedingly ignorant of the character, and apparently of the languages, of the people."

This inference is to be found in a note to Professor Wilson's edition of Mr. Mill's History of India, vol. 2, page 164. "Mr. Mill," he says, "may be excused for making such a mistake as to assert that under the Mahomedan government the offices of 'magistrates' were filled by Hindoos. He follows the authority of Orme; but Orme, though an excellent guide in all that relates to the European transactions which he beheld, must have been exceedingly ignorant of the character, and apparently of the languages of the people. His remark that the administration of justice devolved upon the Hindoos is most certainly erroneous, as no unbeliever could, consistently with the principles of the Mahomedan faith, have been entrusted with such duty; and the illustration he gives, that the office of duan was generally conferred upon Hindoos, is an amusing proof how little he understood what he was saying; the office of duan, or dewan, being of a financial nature, and wholly unconnected with the administration of justice."*

So also no Zimmee can be an arbitrator:

"It is not lawful to appoint a slave, or an infidel, or a person that has been punished for slander, or an infant, to act as an arbitrator, because none of these is competent to be a witness."—Hedaya, vol. 2, p. 638.

These doctrines of the Mahomedan law, relative to the disqualification of any but a Mussulman to be appointed a judge or arbitrator, were found in full force in this country when the British government began to make inquiries into the subject. This will be seen from what is stated in the Sixth Report from the Committee of Secrecy, appointed to inquire into the state of the East India Company, page 9:

"April 1772. Letter from Council of Revenue at Moorshedabad to the President and Council.—This letter encloses a memorial from the naib duan, on the subject of arbitration, accurately distinguishing such causes as are proper for that mode of decision, and such as must be decided by the courts of judicature according to the law; of the latter kind, he states, are all disputes of inheritance, property, purchases, assignment, and the like. That these cases, depending upon the laws of the Scriptures, according to the orders of the Almighty and his Prophet, cannot be proper subjects of arbitration, for the right must be decided according to the precepts of the law, and common arbitrators cannot be proper judges thereof. That cases of misdemeanor or offence, by one subject to another, cannot be referred to arbitration, but must be judged and punished by the proper officers of justice, and much more especially crimes of a higher magnitude must undergo the judgment of the law itself; that, on the other hand, in cases of debt, account, or other commercial concern, arbitration is the best mode of decision; that he had accordingly issued orders to the officers of the courts of justice in the several

* It is true, however, that in the decay of the Mahomedan power the dewan did exercise judicial authority; and Mr. Orme probably took his notions of the Mahomedan system of government from what he saw actually existing, without inquiring how far it might consist with strict Mahomedan principle.—*See* 5th Report, 1812, pp. 6. 190; Colebrooke's Supplement, p. 8; Grant's State of Society in India, in the General Appendix to Report of Select Committee of the House of Commons, 1832, p. 16.

(B.) No. VII.
Petitions of East Indians and Armenians.

several districts, that in all matters of debt, trade, petty quarrels, and ordinary occurrences, where the parties are willing to refer, they should appoint arbitrators, and that registers be duly kept in the Courts of Adawlut of all causes decided in that way.

" The letter of the Council of Revenue represents the necessity of restricting the orders relative to arbitration to such cases specified for that purpose in the naib duan's memorial; for that it would be productive of the greatest dissatisfaction in the country, if that mode of decision was to be substituted in the place of judicial determinations, in such cases as fall under the first principles of the Mahometan law; that such a measure would be regarded by all the Mahometans as an infringement on their religion and customs, would excite great discontent and apprehension, and perhaps be liable to an obstinate and inflexible opposition."

The government of Bengal, in approving of this suggestion, fell into the very natural error of supposing that when the parties to a suit were Hindus, a Hindu might be called in to assist the magistrate with his knowledge; this, it will be seen, called forth a strong remonstrance from the naib duan:

" In the answer from the President and Council to the Council of Revenue, they entirely assent to the distinction proposed in the above letter, declaring that all cases of inheritance, marriage, or other matters, for which the Mahometan law has made provision, and likewise matters respecting inheritance, and the particular laws and usages of the castes of the Gentoos, should be decided by the established magistrates, assisted by the proper persons of the respective religions, according to the laws and usages of each."

" The Council of Revenue, in a letter to the President and Council, May 1772, enclosed a remonstrance of the naib duan, respecting that part of the instructions in the last letter of the President and Council, which directed, that in cases of the inheritance of the Gentoos, the magistrates should be assisted by the Brahmins of the caste to which the parties belong. In that memorial the naib duan strongly remonstrates against allowing a Brahmin to be called in to the decision of any matter of inheritance or other dispute of Gentoos. That since the establishment of the Mahometan dominion in Hindostan, the Brahmins had never been admitted to any such jurisdiction; that to order a magistrate of the faith to decide in conjunction with a Brahmin, would be repugnant to the rules of the faith, and an innovation peculiarly improper in a country under the dominion of a Mussulman Emperor. That where the matter in dispute can be decided by a reference to Brahmins, no interruption had ever been given to that mode of decision; but that where they think fit to resort to the established judicatures of the country, they must submit to a decision according to the rules and principles of that law by which alone these courts are authorized to judge. That there would be the greatest absurdity in such an association of judicature, because the Brahmin would determine according to the precepts and usages of his caste, and the magistrates must decide according to those of the Mahometan law. That in many instances the rules of the Gentoo and Mussulman law, even with respect to inheritance and succession, differ materially from each other."

Lastly, a Zimmee cannot be a witness respecting a Mussulman. This has already appeared by our quotations from the Hedaya, in the form of a reason why a Zimmee cannot be a judge or an arbitrator. In that part of the book which treats of evidence, it is assumed as unquestionable law.

Now, it seems to us as clear as any proposition of the sort can be, that a system of law which, according to its own principles, can only be administered by Mahomedan judges and Mahomedan arbitrators, upon the testimony of Mahomedan witnesses, is not a system which can devolve *ipso jure*, and without express acceptance, upon a government and people of a different faith.

The author of the work from which we have been quoting, is a disciple of the school of Haneefa. This is the most liberal of the Mahomedan schools of jurisprudence; it will be found that they really are very liberal to Zimmees, when the rights of that class only are concerned, and not the rights of Mussulmans.

According to the author of the Hedaya, "The testimony of Zimmees, with respect to each other, is admissible, notwithstanding they be of different religions." Of course it is admissible, *à fortiori*, when they are of the same religion.

He gives the arguments of Malik and Shafei against this last proposition, and the arguments of those with whom he agrees, and whom he calls "our doctors," on the other side, and then shows the invalidity of an objection which might be made

made to the first and more general proposition, but which does not apply to the last and less general one.

Since, then, a Zimmee might be a witness where the rights of unbelievers only are concerned, it seems to follow that, in such cases, a Zimmee might also be an arbitrator, and even a judge. For, as we have seen, the only reason assigned in the Hedaya why a Zimmee cannot be appointed an arbitrator is, that he is not competent to be a witness. In like manner, we have seen that the authority of a kazee is, in the same book, said not to be valid unless he possess the qualifications necessary to be a witness, one of which is, that of being a Mussulman; and immediately after, the reason is assigned in terms which evince in the strongest manner the dependence of the one disqualification upon the other. The whole passage runs thus:—

"The authority of a kazee is not valid unless he possess the qualifications necessary to be a witness; that is, unless he be free, sane, adult, a Mussulman, and unconvicted of slander; because the rules with respect to jurisdiction are taken from those with respect to evidence, since both are analogous to authority; for authority signifies the passing or giving effect to a sentence affecting another, either with or without his consent; and evidence and jurisdiction are both of this nature (the rules with respect to jurisdiction are here said to be taken from those with respect to evidence, because, as the sentence of the kazee is in conformity with the testimony of the witness, it follows that the evidence is, as it were, the principal, and the decree of the kazee the consequent). As, therefore, jurisdiction, like evidence, is analogous to authority, it follows that whoever possesses competency to be a witness, is also competent to be a kazee; and also, that the qualifications requisite to be a witness are in the same manner requisite to be a kazee."

These principles are further illustrated by what is said in the second book, which treats of marriage. Speaking of authority to contract others in marriage, the author observes: "An infidel cannot be vested with this authority with respect to a Mussulman, male or female, because the word of God says, 'He doth not admit infidels to any claim upon believers;' and if this authority were vested in infidels, it would be admitting them to such a claim; and hence, also, it is, that the evidence of infidels, regarding Mussulmans, is not admitted; and upon the same principle, that Mussulmans and infidels cannot inherit of each other.

"An infidel is vested with this authority with respect to his children who are infidels, the word of God saying, 'infidels may exercise authority over infidels;' whence it is that the evidence of infidels regarding infidels is admitted, and that inheritance obtains among them."

These liberal doctrines, coupled with other liberal doctrines which we are about to notice, and which relate to the substantive law, lead, it will be seen, to a result very different from what the intolerant maxims of Islamism would seem to promise. With regard to the substantive law to be administered to Zimmees in Mahomedan courts, the Mussulman jurists appear, in general, to hold that it must be Mahomedan law. But they hold, also, that the law itself admits of more or less modification in its application to Zimmees. Haneefa, indeed, seems to have held, that the injunctions of the law are not addressed to infidels. He seems to have gone the whole length of asserting that the Mahomedan law is a law for Mahomedans, and not a *lex loci*, and that it ought not to be administered to Zimmees, even in a Mahomedan court. This opinion, which does not appear to be adopted by other Mussulman jurists, is attributed to Haneefa in the Hedaya, in discussing the question whether a marriage between infidels, which would have been invalid if the parties had been Mussulmans, but to which there is no objection by the rules of their own sect, is to be considered invalid upon their conversion to Islamism. The opinion of Ziffer, Haneefa's contemporary and companion, upon the same question, is worthy of remark, for it seems to contain the principle upon which, coupled with the doctrine that where Zimmees only are concerned a Zimmee may be a witness, an arbitrator, or a judge, the practice of Mussulman governments has been usually modelled:

"Ziffer maintains the marriage to be invalid, but that infidels are not liable to be called to an account until they embrace Islamism, or until they appeal to the law; that is, carry the matter before the judge."

Again, "The argument of Ziffer is, that the word of the sacred writings extends to all men alike, and consequently to infidels; but the parties, as being Zimmees, are not liable to molestation; but this exemption from molestation is an effect of

indulgence, and does not proceed from any idea of the marriage being legal; and of course when it becomes a subject of litigation, or the parties become Mussulmans, separation must ensue, the illegality of the marriage still remaining."—Vol. 1, pp. 174, 175.

Here we see that, although the word of the law extends to all men alike, and consequently to infidels, still they are at liberty to follow their own customs among themselves, so long as they do not appeal to the law, so long as they do not carry the matter before the judge, that is to say, the Mahomedan judge. But it has been already shown, that where Zimmees only are concerned, a Zimmee may be a judge, whence it follows that a Mussulman prince may, without deviating from orthodoxy, permit any class of his infidel subjects to follow their own laws among themselves, and to have them enforced in courts of justice in which judges of their own faith preside. Thus the Mahomedans arrive, though by a different road, at a practical result which differs little from the system of the Hindoos. They hold, indeed, (Haneefa, however, seems an exception,) that there is a *lex loci* in their country, but they consider it as practically suspended with regard to unbelievers, until they shall be converted to the faith, or shall appeal to a Mahomedan court.

The examples of this are numerous. We learn from Prescott's History of Ferdinand and Isabella, that under the Mussulman rule in Spain, "the Christians in all matters exclusively relating to themselves, were governed by their own laws, administered by their own judges, subject only in capital cases to an appeal to the Moorish tribunals*."—Vol. 1, p. 6.

It is said that the Greeks, under the dominion of the Turks, always looked upon the compilations of the Emperor Basil as the rule of their conduct; and it is probable that in doing so they had the sanction of the Turkish government. For, as we are informed, it appears from Thiersch, (Etat Actuel de la Grèce,) that the Greek Islands were, under the Turks, so many republics, governing themselves entirely by their own laws, and through their own magistrates and judges.

But the most familiar instances are the numerous factories in the Levant and the East, belonging to the various Christian nations of Europe, which we shall have to notice more particularly in another part of this discussion.

Whether, then, we consider the Mahomedan law as itself repudiating the international doctrine of Christian Europe; or the ignominous position which it assigns to persons of a different faith, where the legal rights of Mussulmans are concerned; or lastly, the practice sanctioned by its most liberal expounders, of leaving each class of subjects who are not Mussulmans, to administer their own laws among themselves by judges of their own, we must conclude that the doctrine of the unfitness of Mahomedan law to be the *lex loci* of a country which has passed under the government of a Christian prince, rests upon a more solid foundation than the "mad enthusiasm of the Crusades."

If it should be said that although the Hindoo law, taken as a whole, and the Mahomedan law, taken as a whole, are unfit for the purposes of a *lex loci*, yet some parts of them, as of every other law, are in accordance with universal principles of jurisprudence, and that these parts only, separated from the rest, are to be considered binding upon all persons in British India who are neither Hindoos nor Mahomedans, nor persons who have by express enactment been subjected to English law, the answer is this: The Hindoo and Mahomedan systems profess to consist of an inspired text, and authentic expositions of that text. Each of them is consequently, according to its own fundamental principles, immutable and indivisible. A foreign legislature which disregards their fundamental principles, may, if it pleases, separate part of their provisions from the remainder, and enact that part, as we have actually done with respect to the Mahomedan criminal law; but we do not administer these rules as the commands of God delivered by his Prophet, but as provisions which we think adapted to the circumstances of the country. The separation which we have thus made, and the mode in which we deal with the part separated, are quite inconsistent with Mahomedan principles; for the Mahomedan and Hindoo laws do not recognize the right of any human legislature to take them to pieces; still less will they resolve themselves into separate parts by the silent operation of general principles of jurisprudence, which last is the thing assumed in the supposed objection to which we are replying.

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* Mr. Prescott's authority for this is the Fuero Juzgo; Intro. p. 40. edit. 1815.

It is perhaps hardly necessary to remark that the force of the above reasoning does not depend upon any supposed deficiency of the two systems in question, considered merely as systems of substantive law, nor upon our disbelief of their pretensions to inspiration. Had they been the perfection of wisdom, that would have been a good reason why our legislature should have made laws in imitation of them; but no reason for classing them with systems of law which, upon international principles, are binding, notwithstanding a change of sovereignty, upon all persons coming into the countries where they obtain, until the new sovereign think fit expressly to abolish them. As little would a belief in their pretensions to inspiration prevent us from excluding them from that class. Thus, for example, in the case of the Greek or Roman conquest of the Jews, assuming that the modern principles of international law had been established in those times, the unity of Jewish law and religion would, if our arguments are sound, have prevented that law from extending itself over the Gentile subjects of Antiochus or Vespasian, that is, from being the *lex loci* of Greek or Roman Judea, as effectually as it prevents the Hindoo and Mahomedan systems from being the *lex loci* of British India.

If then neither the Hindoo nor Mahomedan law is *lex loci* of any part of British India, it remains to be considered whether English law is the *lex loci*. If it is not, then we are driven to conclude that there is none at all.

A country governed by one of the civilized nations of modern Europe, and yet having no *lex loci*, would be a phenomenon without example in jurisprudence. To find an European example, we must revert to the state of things produced by the barbarian conquest of the Roman empire. Von Savigny, speaking of the sources of law in the new nations, produced by that conquest, expresses himself to the following effect: "Mixed together in the same territory, the two nations preserved distinct manners and laws, which engendered that sort of civil law called personal law, in opposition to territorial law. In truth, it is a principle of modern times that the law is determined by the territory, and that it governs the properties and contracts of all those who inhabit therein; under this arrangement citizens differ little from strangers, and national origin has no influence. But in the middle ages it was otherwise; in the same country, in the same town, the Lombard lived according to Lombard law, the Roman according to Roman law. The spirit of personal laws reigned equally among the individuals of the different Germanic tribes, and the Franks, the Burgundians, and the Goths lived on the same soil, each according to their own law. Thus is explained the following passage in a letter from Agobardus to Louis the Debonnaire, 'One frequently sees conversing together five people, of whom no two obey the same laws.'"

We translate from the French translation, by Mr. Chs. Guenoux, entitled, "Histoire du Droit Romain au Moyen Age."–V. 1, p. 84.

This however is unquestionably the condition of British India, if it be true that neither the Hindoo nor Mahomedan law can be *lex loci*, and if it be also true that English law owes its introduction into India to the charters of the supreme courts or the mayor's courts.

If there had been no authority in favour of this last proposition, we should have had little hesitation in denying it, and in asserting that when any part of British India became a possession of the British Crown, there being in it no *lex loci*, but only two systems of rules for the government of two religious communities, the English law became *ipso jure* the *lex loci*, and binding upon all persons who do not belong to either of those communities. There is certainly no express authority for this doctrine; but if it be admitted that neither the Hindoo nor Mahomedan law can be considered as *lex loci*, then British India must, we think, be considered with regard to all persons not Hindoos or Mahomedans, as an uninhabited country colonized by British subjects. And then, according to the doctrine said to have been laid down by the Lords of the Privy Council, 2 Peere Williams, 75, with the reasonable limitations assigned to it by Sir W. Blackstone, I. 107, those British subjects must be held to have carried with them to this country so much of English law as is applicable to their situation. 'And so much of the English law must be held to be, and to have been, ever since the country became subject to the British Crown, the *lex loci* of British India.

This seems to us a fair application of principles of international law, to a combination of circumstances to which they have not before been applied. And accordingly, if there had been no authority opposed to it, we should have felt some confidence in this view of the case; but we are afraid that there is very grave authority which is not reconcilable with this view. As far as we know, all the judges of the Supreme Court of Calcutta, who have declared any opinion upon the subject,

(B.) No. VII.
Petitions of East Indians and Armenians.

subject, have used expressions which imply that the legal condition of India, upon its becoming British, was one for which the general principles of international jurisprudence afford no remedy. That even admitting the Hindoo and Mahomedan laws to be by their own nature restricted to the persons professing the religious faith with which they are respectively interwoven, still the legal vacuum which must have been occasioned by this restriction, could not be filled up by the spontaneous influx of English law, but required the express intervention of legislative power.

Those high authorities all appear to consider that the English law, so far as it has been introduced into this country, has been introduced by the charters of the supreme courts and mayor's courts, and would not now be in force in any part of India were it not for those charters.

In the evidence of Sir Edward Hyde East, before the Select Committee of the House of Lords in 1830, in the appendix to that evidence, and in the various learned and elaborate papers by the judges of the Supreme Court, contained in the Fifth Appendix to the Third Report of the Select Committee of the House of Commons, 1831, this doctrine is to be found frequently implied, but being treated as a matter not in controversy, there is no explicit and succinct statement of it adapted to quotation.

We do not know when this doctrine was first broached. We should conjecture that it was not till after the establishment of the Supreme Court in 1774, because it has rather the air of having been devised as a means of reconciling the language of the charters implying, as that language does, that the courts were to administer English law, with the doctrine laid down by Lord Mansfield in the case of Campbell *v.* Hall (decided in the very same year), according to which all Englishmen in India would, if there had been no legislative interference, have been subject to Hindoo or Mahomedan law.

This language of the charters and this doctrine of Lord Mansfield could only be reconciled by the supposition, that the charters were to be considered as legislative Acts introducing the English law, instead of what they apparently purport to be, that is to say, instruments erecting courts for the administration of law previously established, or simultaneously flowing in from some other source.

As a consequence of the doctrine that the charters introduced English law, it has been further held that the same charters abolished the Hindoo and Mahomedan laws, and this appears to be a logical consequence. It looks, however, very much like a *reductio ad absurdum* of the premises from which it is deduced. It is at least a startling proposition, that the laws of the ancient inhabitants of a country can be abolished by an instrument which says nothing about them.

Neither is it very easily reconcilable with the provision in the second charter of the mayor's court, granted in the 26th Geo. 2, that suits between Indian natives only should not be tried by that court unless by the consent of both parties; unless, indeed, that provision is to be considered as tacitly re-establishing the laws which had been tacitly abolished. Any mischievous effects of this doctrine have been obviated, as regards the Supreme Court of Calcutta, by statute 21 Geo. 3, c. 70, sect. 17, which provides, "that their inheritance, and succession to lands, rents, and goods, and all matters of contract and dealing between party and party, shall be determined, in the case of Mahomedans, by the laws and usages of Mahomedans; and in the case of Gentoos, by the laws and usages of Gentoos; and where only one of the parties shall be a Mahomedan or Gentoo, by the laws and usages of the defendant." But in the settlement of Malacca, where there is no analogous statutory provision, the unreasonableness of this doctrine has been most strongly manifested.

The late Sir Benjamin Malkin, when recorder in the Straits, felt himself reluctantly bound to decide that the charter of the court of judicature there, had tacitly abolished the Dutch law, and substituted English law for it.

We cannot think that a principle which bears such fruit as this, is a sound one. Here is the refined legal system of a civilized people, altogether exempt from the crusading prejudice against Mahomedan law, the unquestionable *lex loci* of the settlement of Malacca, swept away by an instrument which does not mention it.

The case in which Sir B. Malkin felt himself compelled to decide thus, was that of Rodyk and Others *v.* Williamson and Others. He thus speaks of it in another case decided by him on 31st March 1835: "I expressed my opinion that I was bound by the uniform course of authority to hold that the introduction of the King's charter into these settlements had introduced the existing law

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of England also, except in some cases where it was modified by express provision, and had abrogated any law previously existing. I intimated much doubt, indeed, whether I should have agreed in such a construction of the effect of a charter, if the question had been a new one; but I felt bound by the weight of authority, and decided against the continuance of the Dutch law at Malacca accordingly."

By the kindness of Sir Edward Ryan we have had access to a note of the case itself, in the handwriting of Sir B. Malkin.

From this note he appears to have said that, if the question were new, he should be inclined to hold the law of a settlement unaltered, except by express declaration, and that a charter would only introduce a new court to administer old law, except when expressly changed, and that the charter did not change law, except criminal, and perhaps ecclesiastical.

After referring to Sir Edward Hyde East's opinion, and to the statute 21 Geo. 3, he appears to have said that he did not dare to act against these authorities, but that it was a very fit question to be decided by the highest tribunal. *A fortiori* is it, we think, a very fit question to be settled by legislative declaration or enactment.

It will be seen from this case of Rodyk *v.* Williamson, that Sir Benjamin Malkin's own opinion was opposed to the doctrine that English law can be tacitly introduced by the King's charter. But as far as we know, he is the only one of the Indian judges who has questioned the correctness of that doctrine.

It appears from the report of Master Stephen, in the case of Freeman *v.* Fairlie, that all the learned judges who had sat on the bench of the Supreme Court in Calcutta, and who gave evidence in that case, referred the introduction of the English law to the charter of 1774, and the former charters. The doctrine maintained by Master Stephen himself coincides with our own opinion, and as he has stated it with great force, we shall make some extracts from his report.

After adverting to the view taken by the Indian judges, and stating that he had examined the charters from that of 24th September 1726, inclusively; he says, "I find in none of them any express introduction of English law; but, on the contrary, they seem all to have proceeded on the assumption that English law was already in force in those settlements, and their provisions are directed chiefly to the establishing competent judicial authorities and rules of proceeding by which the existing law may be better administered."

After examining the charter of 1726, he continues thus: "The same observations apply to the charter of the 8th January 1753, whereby the mayor's courts were established, and their jurisdiction further regulated, and to the charter of 26th March 1774, constituting the supreme court of judicature, upon which the questions in reference are held by the court to turn. Though some of the opinions in evidence before me speak of this latter charter only as having introduced the law of England, no provision to that effect is to be found in it; but it plainly proceeded, like the former charters constituting the mayor's courts, upon the supposition that English law was already generally in force." "I must conclude, therefore, that English law was not, as the learned judges have supposed, brought in by the charters." "India is not, in the sense of the authorities by which the rule has been laid down, a new discovered country, and with respect to colonies or settlements acquired by cession or conquest, within which description our Indian territories are, the rule is different, the laws of the place, in such cases, remaining in force till changed by Royal or Parliamentary authority. But there is an anomaly in the case of the settlements in question which made it difficult or impossible, as I conceive, practically to apply there the latter rule to its full extent, and took the case out of the principles on which both the rules were founded."

In the report of the case, "the" is printed apparently instead of "which."

"The reason why the rules are laid down in the books of authority with reference to the distinction between new-discovered countries, on the one hand, and ceded or conquered countries on the other, may be found, I conceive, in the fact that this distinction had always, or almost always, practically corresponded with that between the absence and the existence of a *lex loci* by which the British settlers might, without inconvenience, for a time be governed; for the powers from whom we had wrested colonies by conquest, or had obtained them by treaties of cession, had ordinarily, if not always, been civilized and Christian states, whose institutions therefore were not wholly dissimilar from our own. But in the settlements formed by the East India Company in Bengal the case was very different,

"Inhabited," in the Report.

and one to which neither of the rules referred to could possibly have an entire application. The acquired territory was not newly-discovered or uninhabited, but well-peopled, and by a civilized race, governed by long-established laws, to which they were much attached, and which it would have been highly inconvenient and dangerous immediately to change. On the other hand, those laws were so interwoven with and dependent on their religious institutions, as Mahomedans or Pagans, that a great part of them could not possibly be applied to the government of a Christian people."

"Some new course was to be taken in this peculiar case, and the course actually taken seems to have been to treat the case, in a great measure, like that of a new-discovered country; for the government of the Company's servants, and other British or Christian settlers using the laws of the mother country as far as they were capable of being applied for that purpose, and leaving the Mahomedan and Gentoo inhabitants to their own laws and customs."

The report of Master Stephen was confirmed by Lord Chancellor Lyndhurst; but as the decision of this question respecting the mode in which English law has been introduced into India, was not necessary to the decision of the questions before the court, the case does not furnish any judicial authority on the point one way or the other. The only report of the case which we have seen is in E. F. Moore's Reports of Cases determined by the Judicial Committee of the Privy Council, p. 305; and from what the reporter says, p. 299, it appears that Lord Lyndhurst's judgment is taken from the shorthand writer's note. We, however, abstain from drawing any inferences from the expressions attributed to that learned Lord, not feeling quite satisfied that they are precisely the expressions used by him.

The latest case in which the introduction of English law into India has been considered, is the Mayor of Lyons *v.* The East India Company, which was an appeal to the Privy Council from a decree of the Supreme Court at Calcutta, made in four causes which had been consolidated, touching the construction of the will of Major-general Claude Martin.

That case decides only that a certain portion of English law, viz. the law disabling aliens from holding real estate, has not been introduced into India at all. This decision seems to be rather in favour of our view of the question, because, if the English law was introduced by the charters, it should seem that all parts of it have been introduced that have not been expressly excepted. Whereas if it came in upon general principles, only so much of it would come in as is adapted to the circumstances of the country. However, as neither the attention of the Supreme Court here, nor that of the Privy Council, was called to the question we are considering, we do not rely upon this case as an authority in favour of our views.

With the exception of the above-mentioned case of Rodyk *v.* Williamson, in which the question was decided merely upon authority, and of Freeman *v.* Fairlie, in which the question was raised in the Master's Report, and not decided at all, we are not aware of any case in which the precise question we are now considering has received any discussion. But there is a case in which Lord Stowell (the highest English authority upon international law) uses expressions which lead to the belief that he would have sanctioned the doctrine that the English law must have come into our factories in India as soon as they became our factories, and into our dominions in India as soon as they became our dominions.

In the case of the Indian Chief, 3 Robinson's Reports, 29, when he is assuming, for the sake of argument, that Calcutta was at the time a mere factory in the dominions of the Mogul, he holds that a subject of the United States of America carrying on trade at Calcutta, takes his temporary national character, not from the Mogul dominion, but from the British factory:

"It is a rule," he says, "of the law of nations applying peculiarly to these countries, and is different from what prevails ordinarily in Europe and the western parts of the world, in which men take their present national character from the general character of the country in which they are resident, and this distinction arises from the nature and habit of the countries. In the western parts of the world alien merchants mix in the society of the natives; access and intermixture are permitted, and they become incorporated to almost the full extent. But in the East, from the oldest times, an immiscible character has been kept up; foreigners are not admitted into the general body and mass of the society of

of the nation; they continue strangers and sojourners, as all their fathers were. 'Doris amara suam non intermiscuit undam.'"

Now, if the temporary national character of the alien was English, it should seem that the *lex loci* under which he was temporarily living, must also have been English, even though that law had never been introduced by any express legislative provision. And again, if the *lex loci* of an English factory in the Mogul's dominions be, upon general principles, English, it should seem that the *lex loci* of a dominion of the British Crown acquired from the Mogul must, upon the same principles, be English. And accordingly Lord Stowell, when he dismisses the assumption which he had made for the sake of argument, and considers Calcutta as a part of a British dominion in India, thus expresses himself: "The law of treason, I apprehend, would apply to Europeans living there in full force; it is nothing to say that some particular parts of our civil code are not applicable to the religious or civil habits of the Mahomedans or Hindoo natives, and that they are on that account allowed to remain under their own laws. I say this is no exception; for with respect to internal regulations, there is amongst ourselves in this country a particular sect, the Jews, that in matters of legitimacy, and on other important subjects, are governed by their own particular regulations, and not by all the municipal laws of this country, some of which are totally inapplicable to them."

Here then we have this very eminent publicist putting the existence of the Hindoo and Mahomedan laws in British India upon the same footing as the existence of the Jewish law in England. Then, if there is nothing to prevent English law from being the *lex loci*, except the existence of two communities whose legal condition is similar to that of the Jews in England, it should seem that English law is the *lex loci*.

This doctrine laid down by Lord Stowell has been fully recognised and adopted by judicial authority in India. In the case already mentioned of General Martin's charity, Sir Edward Ryan, in deciding upon certain exceptions which had been taken to parts of the Master's report, observed, that under the decree the Master was directed to inquire and report what was the domicile of the testator, and whether by the laws and usages obtaining at Lucknow, the inheritance and succession of and to the real and personal estates of deceased persons being European Christians, are regulated by the Mahomedan law, or by the laws of the place and country of such deceased persons, or by what other law or usage. "In the present report," Sir E. Ryan said, "the Master has stated that in his opinion General Martin was domiciled at Lucknow; but he has wholly omitted to inform the court by what law the inheritance and succession to his property is to be governed. The only reason the court could require from the Master a report on the domicile, was to know in what manner the property was to be distributed."

After having attentively perused the whole of the evidence given in this case, Sir E. Ryan said, "that he was of opinion that General Martin was not domiciled at Lucknow, which is a Mahomedan country, and to which therefore the observations of Sir W. Scott in the case of the Indian chief closely apply." He then cited the same passage which we have cited above, and added that "in the appendix to that case, the certificates of the councils at Smyrna establish the same point."

This case, it will be seen, goes a step further than that of the Indian chief, though in strict accordance with the principles which were there laid down.

Lord Stowell held that an European, domiciled in an European factory within a Mahomedan dominion, takes his temporary national character from the European factory, because the Mahomedan dominion cannot impart such temporary national character. Sir E. Ryan deduces as a consequence from this, that an European Christian resident in a Mahomedan dominion, and not in an European factory, cannot acquire a domicile in that dominion so as to make his personal estate distributable according to Mahomedan law; and if that be so, it should seem that nothing but the intervention of a competent legislature can make an European generally subject to or entitled to Mahomedan law, according to the principles of any but Mahomedan jurists.

The doctrine of these cases seems scarcely reconcilable with that of Lord Mansfield, in Campbell *v.* Hale. If the Mahomedan law extends itself over all strangers in a country under Mahomedan dominion, what becomes of the "immiscible character" upon which Lord Stowell insists? And why should not

(B.) No. VII.
Petitions of East Indians and Armenians.

a Christian acquire a domicile in such a country as easily as in a country in which law and religion are distinguishable things?

It is true that, according to the principles of Mahomedan law, it not only does extend itself over all strangers, but never gives place to any other law; but this, as we have said, is a pretension which can never be admitted as a doctrine of international jurisprudence, in which the privileges and disabilities of nations and of their systems of law must be reciprocal.

It will be seen, moreover, that a very eminent chief justice of the Supreme Court has expressed himself, extra judicially indeed, but still upon a solemn occasion, as if he hesitated to admit some of the consequences which are deducible from Lord Mansfield's principle.

The eminent person of whom we speak is Sir Edward Hyde East, who in his evidence before the Select Committee of the House of Lords, says, "The Portuguese, Armenian, and other Christians of native or foreign extraction, together with the half-caste or illegitimate Christian children of British fathers by native women, form a very considerable and important class, which for several purposes is out of the pale of British laws, though not within the Hindoo or Mussulman rules."—p. 152.

Further on he says of the last-mentioned class, "It is worth while to consider in what condition these persons are, if they be not British subjects; they are native-born, and cannot upon any common principle of justice be debarred from colonizing in their native and only country. What is their law of inheritance or succession or marriage out of the precincts of Calcutta? Can the Hindoo or Mahomedan laws be administered to them as Christians?"

Sir Edward East would hardly have put this question, if he had felt that he could rest with perfect security upon Lord Mansfield's doctrine.

The convention made at Versailles on the 31st August 1787, between his Britannic Majesty and the Most Christian King, has some bearing on this subject. The language of that convention seems to indicate that both the high contracting parties understood that English law was the law of all persons in British India not Hindoos or Mahomedans. By that convention his Britannic Majesty "engaged to take measures to secure to French subjects without the limits of the ancient factories above mentioned (the ancient French factories) an exact and impartial administration of justice in all matters concerning their persons or properties, or the carrying on the trade, in the same manner and as effectually as to his own subjects."

It seems clear that the object of this stipulation was not to save French subjects from Hindoo and Mahomedan law, but merely to secure to them an exact and impartial administration of the law to which they were already entitled. This could be no other than English law, and Frenchmen could not have become entitled to English law through the charters and statutes; for if so, they must *à fortiori* have been already entitled to the same exact and impartial administration of it as had been provided for British subjects.

It appears that a Bill to accomplish the object of the convention, by giving to the Supreme Court civil and criminal jurisdiction over Frenchmen, was prepared in the year 1788 by the Advocate General*, and transmitted to the Court of Directors. Whether it was ever brought into Parliament we are not informed.

This leads us to the consideration of another circumstance which has contributed to perplex this difficult question. Although it is not easy to suppose that His Britannic Majesty, by engaging to take measures to secure to French subjects an exact and impartial administration of justice, meant that he would give them the benefit of a law to which they were not before entitled, still the measure of giving to the Supreme Court jurisdiction over Frenchmen would, besides accomplishing what the King had engaged to do, have had practically, as will presently appear, the effect of giving them English instead of French law.

It is to be observed, that the Company's courts are, in respect of all persons not Hindoos and Mahomedans, not courts of law, but mere courts of conscience.

The only laws which those courts are empowered to administer are the Mahomedan law to Mahomedans, and the Hindoo law to Hindoos, in suits regarding succession,

* Slavery in India 1828, p. 39. By a Regulation passed on the 27th August 1788, Frenchmen were exempted from the jurisdiction of the mofussil criminal courts; but this exemption is omitted in the Regulation of 1793, and has not been in force since that time.

succession, inheritance, marriage and caste, and all religious usages and institutions. Regulation IV. of 1793, Section 15.

In cases for which no specific rule may exist, the judges are directed to act according to justice, equity, and good conscience. Regulation III. of 1793, Section 21. This Regulation applied only to Bengal, Behar, and Orissa, but it has been since extended to the other provinces of this presidency, and has been adopted in the Madras Regulations.

By Section 9, Regulation VII. of 1832, it is provided, that whenever "in any civil suit the parties to such suit may be of different persuasions, when one party shall be of the Hindoo and the other of the Mahomedan persuasion; or where one or more of the parties to the suit shall not be either of the Mahomedan or Hindoo persuasions, the laws of those religions shall not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled. In all such cases the decision shall be governed by the principles of justice, equity, and good conscience; it being clearly understood, however, that this provision shall not be considered as justifying the introduction of the English or any foreign law, or the application to such cases of any rules not sanctioned by those principles."

The provisions relating to this subject in the Bombay code are to be found in Regulation IV. of 1827, Section 26: "The law to be observed in the trial of suits shall be Acts of Parliament and Regulations of Government applicable to the case; in the absence of such Acts and Regulations, the usage of the country in which the suit arose; if none such appears, the law of the defendant; and in the absence of specific law and usage, justice, equity, and good conscience alone."

Section 27, Clause 1: "When in any matter depending on the peculiarities of Hindoo or Mahomedan law, a doubt arises regarding such law, the court, in aid of its judgment, shall consult the officer or officers appointed to expound those laws respectively, in the manner prescribed in Regulation II. of 1827, Section 13, Clause 3."

Clause 2: "When in any matter depending on the peculiarities of any other law, or of a rule or usage of a sect or caste, a doubt arises regarding such law, rule, or usage, the court shall ascertain the same, by examining persons versed in such law, or the heads of such sect or caste, or other well-informed persons."

Political considerations similar to those which prevented this government from coining money with the head of the British King, but which have now ceased to operate, have no doubt also prevented the legislature from saying what is the *lex loci* of this country, and it has seemed the less necessary to do so, as the Supreme Courts hold themselves bound by their charters to administer English law, when there is no express provision to the contrary, and as the mofussil courts are all courts of conscience.

But although the mofussil courts are courts of conscience, their position in respect of law is not analogous to that of the courts which in England now bear that name; those are courts for the recovery of small debts and nothing more, and such courts can very well decide the cases within their competence with little or no reference to any law; but the courts in the mofussil have to decide upon all kinds of rights, not only those which are the same in all countries, but those which, depending upon mere positive institution, are different in different countries. A man who borrows money and refuses to repay it, acts unconscientiously, whether he does so in England or in France. But a man who withholds from his younger brothers a share of his deceased father's land, acts conscientiously in England and unconscientiously in France. In these cases, as one of our old law books expresses it, "the diversity of law maketh the diversity of conscience." Before, therefore, a court of conscience can decide a question of this latter sort, it must know under what law the parties are living.

The position of the mofussil courts, therefore, in regard to law, is much more analogous to that of those courts of conscience in England which have now got the distinctive appellation of courts of equity. The mofussil courts, in order to decide rightly, must and do adopt that maxim on which the English courts of equity act; viz. that equity follows the law. Surely, therefore, it is of importance that a judge in the mofussil should know what law it is that his equity is to follow.

It is quite true that, if English law is the *lex loci*, the mofussil courts, from unavoidable defect of technical knowledge, must find considerable difficulty in shaping their equity according to that law. But it is equally true that, if there is no *lex*

(B.) No. VII.
Petitions of East Indians and Armenians.

loci, their difficulties, though not exactly of the same kind, must be, in some respects, much greater; for upon that supposition their equity may have, upon occasion, to follow every law in the world; and very frequently before they can decide what law their equity is to follow in any particular case, they must decide difficult questions of mixed fact and law. Questions of pedigree, which are those that will arise upon such occasions, take up more time in the investigation, and give less satisfaction in the decision, than perhaps any others.

In addition to these most difficult questions of mixed fact and law, the mofussil courts must have also to decide frequently questions upon the conflict of laws, well known to be among the most puzzling which exercise the skill of jurists.

No courts can indeed altogether avoid these questions, but they must necessarily spring up in the greatest abundance in a country where there is no *lex loci*.

Again, by far the greater number of cases in which equity in this country must follow some law, are likely to be cases in which it must follow English law, because Englishmen and their descendants are likely to be much more numerous in India than any other persons not Hindoos or Mahomedans.

Now, if English law is not the *lex loci*, it must be considered in the condition of any other foreign law, and the mofussil judge would not, according to established principles, be justified in deciding upon his own knowledge of it, but ought to require in each case that the party alleging the English law should prove by documentary evidence or by testimony that the law is what he alleges it to be. This course might relieve the judge from some responsibility, but it would surely be very prejudicial to the interest of the suitors.

The mofussil courts have had to decide some cases, though hitherto probably very few, in which they have felt that the equity they are to administer must follow some law.

The doctrine they have adopted is, that there is no *lex loci* in British India, and their practice has been to ascertain in the best manner they could, what was the law of the country of the parties before them.

By this doctrine and practice the remarkable state of things mentioned by Agobardus is reproduced. In this country it would be easy to assemble many more than five persons of whom no two follow the same law. But besides this necessary consequence, the doctrine and practice in question gave rise, in the peculiar circumstances of British India, to many other strange difficulties and anomalies.

First, there is the singular consequence alluded to above, that the measure of bringing Frenchmen under the jurisdiction of the Supreme Court would have deprived them of French law, or at least of equity following French law; a change which the French nation could hardly have looked upon as a boon, and for which the French King could hardly have intended to stipulate.

Another very singular consequence is produced by the limitation which this doctrine and practice receive from the principle that all British subjects (technically so called) are to have English law administered to them. We mean the consequence, that the Scots alone of all the nations upon earth, are not entitled to have any regard paid to the laws of their country in the adjudication of their suits by the mofussil courts. This, however, though monstrous in theory, is no practical grievance; the anomaly is not that the Scots in India are brought under English law, but that people of other nations in India are not brought under it.

That the law of Scotland is thus excluded from the mofussil courts might perhaps be inferred from the case of Fernandez *versus* De Silva and another, cited below, where it will be observed, that, although the Sutherlands were Scotsmen, yet no doubt seems to have occurred either to the Sudder Dewanny Adawlut, or to the Advocate-general, as to the applicability of English law to them as British subjects. As, however, the point was not raised in that case, we should not speak confidently upon the strength of that inference alone. But the admission of Scots law into the mofussil courts in the suits of Scotsmen, would involve a much greater anomaly than the opposite course, and a really intolerable practical inconvenience. For, as Scotsmen are British subjects, and therefore amenable to the Supreme Court, not only when within its local jurisdiction, but also when resident in the mofussil, they would actually be living at the same time and place under two different laws. Every Scotsman would have English or Scots law applied to him, according as his antagonist thought fit to sue him in the Supreme Court, or in the court of the district where he might be residing.

But the case of all persons who are cut off, by the illegitimacy of themselves or their ancestors, from all legal connexion with the country from which they sprung,

is left unprovided for by this doctrine of personal laws. All such persons (and these petitioners are such) whose native and only country is British India, have certainly a right to ask, not in vain, of the legislature, that if there is a *lex loci* it should be declared, and that if there is not, one should be enacted.

The case of the Armenians, too, is left unprovided for by this doctrine. They are not indeed cut off by illegitimacy from the country of their national origin. But, as the Armenians of this presidency stated in a petition to the Governor-general in Council on the 10th September 1836, their race "has long ceased to be anywhere a nation." If they ever had any law derived from Armenia, it must apparently have been the Roman law, for their ancient law appears to have been abrogated by Justinian.

The title of the 21st Novel is, "De Armeniis, ut et illi per omnia Romanorum leges sequantur." *

The special object of this Novel was to substitute the Roman law of succession for the Armenian, which excluded females. But it seems clear from the emperor's expressions that it was only the last step of a series of changes by which the Armenian nation had been brought under the Roman law; or, perhaps a change which, on account of its peculiar importance or the peculiar reluctance of the people to adopt it, was thought to require special provision; while general words were considered sufficient to effect the desired substitution in other respects.

This law was enacted in the year 536, and, excepting an edict of the preceding year, it is all we have been able to find respecting the legal history of Armenia. This edict is to the same effect as the Novel above-mentioned, and shows by its preamble that the barbarous and uncommon law (barbaricam et insolentem legem), as the emperor calls the Armenian law of succession, had only lately been brought to his notice.

But whatever law the Armenians had at the time when they ceased to be a nation, it appears to have fallen into desuetude, and even into oblivion. In the petition above mentioned, they say amongst other things, "In the courts of the Company no settled rule of law whatever has prevailed in respect to the inheritance and succession to property of deceased Armenians. While some of the Company's judges follow the course of the King's court, and adopt the rules of English law, others hold themselves bound to act upon their individual notions of equity pursuant to the terms of Regulation VII. of 1832, Sec. 9, and others bewilder themselves in the vain endeavour to discover the law of Armenia, of which there is no trace extant, and refer to Armenian ecclesiastics, whose legal knowledge, when they have any, is limited to the bare rudiments of the canon law."†

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* The original is Greek; we quote the Latin version.

† Since the observations in the text were written, our secretary, Mr. Sutherland, has received from Mr. Avdale, an Armenian gentleman, well versed in the literature of his country, a paper on the laws and law books of the Armenians.

From that paper it appears, that since the epoch of Justinian's legislation, two codes of Armenian law have, at different times, been compiled. The first is said to have been compiled under the auspices of the Armenian king, Johannes Bragratian, about the year 1046, and is known only through the medium of a translation made into Latin, in the year 1548, by order of Sigismund the First, king of Poland, into whose territories a body of Armenians had emigrated in the eleventh century. The second is the compilation of Mechithar Ghosh, a learned Armenian, who flourished in the end of the twelfth and beginning of the thirteenth centuries. According to this writer there was, in his own times, a total absence of laws and law books among the Armenians, and he was stimulated to the preparation of his code by the reproaches which this destitute condition drew upon his country. "Why were we disposed," he says, "to compile this book, or what incentives induced us to resolve on framing this code?" and among the reasons which he assigns, in answer to this question, are the following: "That we have been accused not only by unbelievers, but by Christians also, of a total absence of law books based upon the principles of Evangelical laws." "That lest, from the non-existence of a written law, the Armenians should apply or appeal to unbelievers for justice." From this statement of his reasons it may be conjectured that the object of Mechithar Ghosh was to deduce a system of jurisprudence from the Jewish and Christian Scriptures, in the same way as the Mahomedan jurists have deduced one from the Koran. A copy of this book exists at Venice; but neither of this nor of the preceding code does any copy exist in India.

In a late case, however, in the Sudder Dewanny Adawlut, a MS. Armenian law book was produced as an authority to Mr. Wigram Money, one of the judges of that court; Mr. Money referred the book to the late Mr. James Prinsep, in order that, through his acquaintance with the literary members of the Armenian community, he might obtain an opinion upon the character of the book, and a correct translation of the passage relied upon. Mr. Prinsep consulted Mr. Evdale, who informed him that the book was written or transcribed in the year 1686, and that "the materials of which it is composed are derived from the Old and New Testaments, and from other ancient records."

(B.) No. VII.
Petitions of East Indians and Armenians.

The Parsees, also, are nearly in the same condition, except that in losing the memory of the laws to which they were subject when they fled from their native country, they appear in some places to have borrowed customs from the Hindoos.

When these cases are considered, it will be seen that, though British India may appear, on the one hand, to have less need of a *lex loci* than any other country, because the great mass of its population consists of two sects whose law is contained in their religion; yet, on the other hand, there is probably no country in the world which contains so many people who, if there is no law of the place, have no law whatever.

Indeed, whether we look at reasons drawn from jurisprudence, or at reasons drawn from convenience and utility, there is no doctrine more certain than this; that in every country there ought to be a law which is, *primâ facie*, applicable to every person in it. The number of classes which, in any particular country, should be exempted from this law, must always depend upon the circumstances of that country; but, be these classes few or many, small or large, the necessity of a law for persons whose condition cannot be defined beforehand, or who cannot be brought by evidence within any of the defined classes, remains undeniable.

We find four cases in the Reports of Cases in the Sudder Dewanny Adawlut of Calcutta, and one in those of the Sudder Dewanny Adawlut of Bombay, which will exemplify that doctrine and practice of the mofussil courts of which we have been speaking.

We shall arrange these cases, not in the order in which they occurred, but in that most convenient for our present purpose.

We must observe, that we have not found any case deciding upon the rights of that class to which the petitioners belong.

There are three other classes of persons in this country whose legal condition seems to us to require definition by legislative provisions.

1. All foreigners, not being Hindoos or Mahomedans.

2. Subjects of Her Majesty, not being British subjects in the narrow and technical sense of the term, and not being Hindoos or Mahomedans, among whom the Portuguese are remarkable from their numbers, the Armenians from their numbers and wealth.

3. British * subjects in the narrow and technical sense of the term.

Following this arrangement, we shall cite first the case of Mr. R. Durand, &c. *v.* Julien Boilard, &c. vol. v. p. 176.

In this case, which was an appeal from the Provincial Court of Patna, Jean Baptist Le Breton, a native of St. Maure in Britany, in France, was settled as a merchant in Patna, where he died in 1814. He made a will, by which, among other things, he bequeathed 10,000 sicca rupees to his two ~~brothers in France~~.

Mr. C. Smith, who first heard the case, observed, that " they (the two brothers) must

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Mr. Evdale notices, in his answer, the two codes above mentioned, and then proceeds as follows:

" As neither of these law books has found its way to India, I am unable to say whether the volume you have sent me is a transcript of the one or the other, for the name of the author or legislator has unfortunately not been inserted therein. I am, however, inclined to think it to be a compilation from both; but cannot take upon myself to say whether it is one of established legal reputation in Armenia. It is greatly to be regretted that the code of Mechithar Ghosh has never been printed or published to this day. This, under existing circumstances, is certainly a very serious evil to the Armenians living under the jurisdiction of our zillah courts."

Avietic Ter Stephanos, after his death, Gabriel Avietic Ter Stephanos, *v.* Ana Bibi, wife of Ithawaj Arratoon Ter Stephanos.

The judgment of the Court of Sudder Dewanny Adawlut appears, by a report * of the case, made by our secretary, Mr. Sutherland, to have been founded partly upon this manuscript book.

We can readily sympathise in Mr. Evdale's regret as a zealous antiquarian, and as a member of a nation long exiled from its original seat. But we cannot agree with him in thinking it a very serious evil, in a legal point of view, that neither of these ancient codes has been made accessible to the Armenians of British India, and to the courts which decide upon their rights.

On the contrary, we are disposed to consider the admission of this transcript of one of those codes, or this compilation from both of them (whichever it may be), as law by which the present generation of Armenians is to be bound, in the light of an evil requiring remedy. We look upon it as an additional argument for the conclusion at which we have arrived.

The Armenians complain most reasonably, in their petition, that they are without laws. But now they are not only without laws, they are moreover in peril of having the laws of King Johannes Bragratian, or of Mechithar Ghosh, made to operate, *ex post facto*, upon contracts and dispositions framed in absolute ignorance of what those legislators may have provided.

* Although English law is administered to British subjects by the mofussil courts as a personal law, and although, in our opinion, the same law ought to be administered to them as a *lex loci*, stil the dictum in the case of Campbell *v.* Hall throws so much doubt upon their legal condition, that it may properly be said to require definition.

must be presumed in reason, and under the French law in regard to absentees, to have died before the date of the will; for their disappearance for more than 40 years prior to 1819 is inferrible. Under the French law (that of the parties) a bequest to a deceased person does not devolve on his heirs."

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"For the decision of this case in this point (a point having no bearing on our subject) must be ascertained; as also the distribution of personal property in case of intestacy under the French law, when a widow and collateral kin may concur."

The case was accordingly postponed, and the judge of Hooghly (selected, no doubt, on account of vicinity) was directed to obtain the opinion of the law officer of the government of Chandernagore. The opinion of that officer was obtained, and judgment given in accordance with it.

Upon this case it is to be observed, that the received rule respecting the succession to personal property is, that it follows the *lex loci* of the country in which the deceased was a domiciled inhabitant at the time of his death, without any regard whatever to the place either of birth or death, or the situation of the property at the time; and it is possible that Le Breton was not domiciled at Patna. But, as the court do not advert at all to the question of domicile, it is to be presumed they thought that no residence at Patna could have the effect of substituting any other law for the law of Le Breton's French domicile, or, in other words, that there is no *lex loci* at Patna.

With respect to the mode of ascertaining the French law, the court appear from the report to have felt themselves competent to say for themselves what the French law is as to the presumption of death from absence, and as to the effect of a bequest to a person deceased, and to have thought it necessary to consult the Procureur du Roi at Chandernagore only upon the question of distribution.

II. The next case is that of Avietick Ter Stephanus *v.* Khaja Michael Arratoon, 3 Sudder Dewanny Rep. p. 9.

As, according to the note of the learned reporter, "the decision in this case seems to have been passed, not so much with reference to the principles of the Armenian law regarding succession to property, as to the fact of the virtual acknowledgment by the respondent of the rights of the individual through whom the appellant claimed," we shall not do more than extract the following passage, which contains the only part of the case illustrative of our subject, and is sufficiently intelligible of itself:

"On the 24th of July 1818, the claim of the plaintiff was dismissed by the fourth judge of the Dacca Court of Appeal, on the grounds that Susan Bebee had no right of succession; that the claim of the plaintiff through her was consequently groundless; that admitting her to have the right of succession, it was not competent to her, after having made a disposition in favour of the defendant for a valuable consideration in the year 1803, to make another in favour of the plaintiff in the year 1807." An appeal having been preferred from the above decision to the Sudder Dewanny Adawlut, the court deemed it necessary to consult the Bishop of Armenia on the law of the case, and the following question was accordingly propounded to that dignitary: "*A.* dies intestate, leaving *B.*, a natural son, *C.*, an uncle, and *D.*, the daughter of an uncle, who was the elder brother. *A.*, during his lifetime, acquired the estate from his own exertions, without assistance from any hereditary property, and verbally acknowledged *B.* as his son and successor. To whom, or in what proportions, does the acquired estate of *A.* devolve on his demise by the Armenian law or custom?" The bishop's reply was in the following terms: "As *A.*, during his lifetime, acquired the estate from his own exertions, without assistance from any hereditary property, he had consequently the sole right of the disposal of his own acquirements freely and voluntarily as he pleased, or to constitute a representative thereto. And, as you observe, *A.* died intestate, and verbally acknowledged *B.* (a natural son) as his son and successor, I presume by this *A.* had no legitimate son. The property in this case no doubt devolves on *B.*, the acknowledged successor of *A.*, in preference to *C.* and *D.* The proportioned claims of an uncle and an uncle's daughter, would have been grounded had the property been patrimonial."

III. The case in the Reports of Civil Causes adjudged by the Sudder Adawlut of Bombay is that of Mrs. E. Humrus *v.* Mr. J. Humrus. It was a suit instituted in the Zillah Court of Surat by a wife against her husband (from whom she had been separated for 30 years) for maintenance, both in respect of the past and the future.

(B.) No. VII.
Petitions of East Indians and Armenians.

" The court conceived it essential first to determine by what law the case was to be tried."

" The parties stated themselves to be of the Armenian church, and to have been married according to the rites."

After the Armenian archdeacon had given evidence as to the law, " the court gave time for the parties to come to an amicable adjustment. This failing, the cause was brought on for trial, when the court observed, that the evidence of the archdeacon was so much against what would reasonably be conceived to be the right of a Christian wife, that some suspicion might be entertained of the partiality of the witness. Nevertheless, custom and law might be as he had stated it, the intention and object of its harshness being to keep the wife in subjection, in conformity with the prejudice of all oriental people. It was therefore held that appellant could not recover the arrears she sued for, laid at *Rs.* 45,000, but that she was entitled to a future maintenance so long as she remained in separation from respondent. To fix, however, the exact amount of the alimony to which appellant was entitled would be difficult. In a conversation which then ensued with respondent, he agreed with the court to allow the monthly sum of *Rs.* 40, provided the appellant continued to live separate from him."

The court decreed accordingly, and from its decree the wife appealed to the Sudder Adawlut.

" The sitting judge referred the case to a competent court, with his opinion that it (the alimony) should be raised to *Rs.* 60 per month."

" The court having neither peculiar custom nor precedent for its guide in judging what might be a suitable maintenance for appellant, and being thus left to its discretion, was inclined to fix upon a medium between that determined on by the zillah judge in the first instance, and that by the chief judge who sat on this case. The zillah court's decree was, therefore, so far amended as to fix *Rs.* 50 per mensem instead of *Rs.* 40." Borrodaile's Reports, II. 496.

These two cases not only illustrate the practice of the mofussil courts, but confirm, we think, the complaint of the Armenians as to the vanity of the attempt to find out an Armenian law by the examination of Armenian ecclesiastics.

IV. Next is the case of Joanna Fernandez *v.* Dominga De Silva and Anthony Libra, vol. 2, Sudder Dewanny Report, page 227, by which it will be seen, that in 1791 the Court of Sudder Dewanny Adawlut determined that the estate of Charles Sutherland (whom the court then no doubt considered as a Portuguese) should be divided among his surviving heirs in such proportions as should be found to be consonant to the customs and usages of the native Portuguese in this country."

In a later stage of the proceedings, viz. in 1794, the same court, after consulting several persons conversant with the Portuguese law of succession as applicable to the case, and being advised by them, passed a provisional judgment accordingly.

In another suit respecting one moiety of the same estate, which came before the Sudder Dewanny Adawlut upon appeal from the provincial court, it appearing clear from all the evidence that Herbert Sutherland (the father of Charles Sutherland), the original grantee of the estate, was a British subject, reference was made to the Advocate-general, who gave his opinion " that Charles Sutherland's estate could only (although his wife was a Catholic) descend to his heirs according to English law; that under the circumstances, there was no heir to him existing, and that the real estate escheated, subject only to the widow's dower." The officiating Advocate-general, who was afterwards referred to, declared his opinion that that estate would revert to the Honourable Company, and not escheat to the Crown, and a final decree was made accordingly.

Now, as there is no principle of general law more clearly settled or more universally recognised than this, that the succession *ab intestato* to immoveables or real property is wholly governed by the *lex loci rei sitæ*, the Court of Sudder Dewanny Adawlut must be presumed in this case to have held that there was no *lex loci* of the place where this estate was situated.

This case shows strongly the difficulties in which the courts may be placed in ascertaining the provisions of a foreign law.

Believing that Charles Sutherland was a Portuguese, the court consult several persons conversant with the Portuguese law of succession, and make a decree in accordance with the advice of those persons, which disposes of the estate quite differently from what the English law would have done. Yet the reporter informs

us in a note, that " had this case been decided according to the law of Portugal, the decision would have been the same (as the decision according to English law), as it appeared from a communication with some professors of the law at Goa (who were latterly consulted) that by a special law in Portugal, termed the Mental, and applicable to this case, all grants made by the Crown, and sub-grants made by great donees of the Crown, become escheats on failure of the legitimate descendants of the original donee, relations not in the direct line being excluded."

The mode of ascertaining the provisions of the English law by consulting the Advocate-general, is perhaps practically the best that could be adopted under the circumstances, if the parties are not precluded from contesting the correctness of his opinion.

V. The last case is that of T. Hoo (attorney of Thomas Hutt, deceased) *v.* Peter Marquis, 4 Sudder Dewanny Reports, p. 243; and it is the most important of the five for the illustration of the subject under discussion. The facts of the case are thus stated by the Court of Sudder Dewanny Adawlut, when requesting the opinion of the Advocate-general upon the law:

" Thomas Hutt, an Englishman (in the pilot service), died in 1792 at Calcutta, leaving a widow, Lucy Hutt (a native of India), and Thomas Hutt, a son of the marriage, then a minor; and he left property consisting of two houses within the town of Calcutta, and one house, with one beegah, seventeen biswas of land, without the town at Entally, and sundry personals, besides about 1,000 rupees in cash. Letters of administration were granted to the widow (the deceased having died intestate) by the Supreme Court, in the same year. On the 7th March 1800, the widow, as administratrix, sold the house and ground at Entally to Peter Marquis (not a British subject) for 500 rupees, and possession was given accordingly."

" In the year 1811 the son (T. Hutt, jun.) became of age; and in 1818, but not before, brought a suit in the zillah court of the suburbs against Peter Marquis, then and now a resident of the suburbs, to set aside the sale as made without due authority."

" A pottah seems to have been taken out by the purchaser in the usual form, and after the usual proclamation and notice from the collector's office in 1815, and no hindrance seems to have been offered by Hutt, jun.; he alleges that he did not know of it."

" From the evidence in the case, the court infer that the sale by the administratrix was not an indiscreet or unnecessary one; that it was made with a view to effect repairs in the two Calcutta houses, and for a purpose beneficial to the estate; and that the chief part of the proceeds was so applied, and no part applied to any unfit purpose; and the price, according to the rates of the time, though they are now higher, was not an inadequate one."

The court then request the opinion of the Advocate-general, " whether, under these circumstances, and considering the long possession of the purchaser under the sale, and the non-molestation of the minor for several years after he became of age, the court would be justified, under the English law, in upholding the sale, and leaving the son to get an account of the application of the proceeds from the executrix, or whether the sale must, at all events, be held invalid; that is to say, whether decisions hitherto made by the Supreme Court recognise or not sales of land by an administrator; and, if they do, whether the ground is narrowed to sales for the actual payment of debts, or is generally for purposes beneficial or necessary to the estate."

" It should be observed, that in the case in question the estate was not insolvent; nor, as far as appears, had there been when the sale took place, nor has there been since, any separate assignment of the respective rights of the widow and the son in the estate."

The reply of the Advocate-general was to the following effect:

" There has been so much difference of opinion in the Supreme Court upon the various questions connected with real property in this country, that I feel some hesitation in giving my opinion on the case submitted to me from the Sudder Dewanny Adawlut; I believe, however, that it never has hitherto been decided that an administratrix of an intestate estate could make a good title to a purchaser of any of the real property of the intestate, if he died solvent; and if lands in the mofussil are to be considered in any degree in the light of estates in fee-simple, which seems to have been held in the case of Gardiner *v.* Fell, 1 Jacob and Walker, 22, I do not know how such an administratrix can convey such an estate. My own opinion is that she cannot, and that this vendee, under her con-

(B.) No. VII.
Petitions of East Indians and Armenians.

veyance, may at any time within 20 years be ousted by ejectment; I am consequently of opinion that the court would not be justified, under English law, in upholding the sale in question. But it seems to me, that exercising (as I understand the mofussil courts to do) an equitable as well as legal jurisdiction, the Sudder Dewanny may well require the heir-at-law to account for and refund to the purchaser such portion of the purchase-money as shall be proved to have been expended for the benefit of the heir-at-law, on any other property to which he also succeeds; and if it can be shown that he inherited from or took under the will of his mother any property sufficient to make good the amount of the purchase-money, I think it would be consistent with the rules of English equity to compel him to refund the whole amount of such purchase-money, with interest of course, setting off such reduction against the mesne profits."

"Having perused the above reply, and taken into consideration all the circumstances of the case, the chief and fourth judges recorded their opinion that the decree of the provincial court should be reversed, and that the appellant should recover possession of the land sold, on condition of his paying, within the period of six months from that date, the amount of the purchase-money paid by the respondent to Lucy Hutt. Final judgment was passed accordingly. The decree did not provide for payment of interest, the court deeming it probable that the mesne profits had exceeded the interest on the purchase-money, and it being deemed advisable to leave that question open to future adjustment. The appellant and Lucy Hutt were left to adjust between each other the proportion in which each was to contribute to the refund."

The view which the mofussil courts took of their duty was certainly a very natural one. As British subjects were not originally subject to the jurisdiction of the mofussil courts, and as the Indo-British race had not sprung up when they were first established, it would have seemed a strange course, though we believe it would have been a correct one, to administer English law, or a system of equity moulded upon it, to the French, Dutch, Spaniards, and Portuguese, and their mixed descendants, who were to be found in the country.

As long as such a state of things existed, it was not of much immediate importance to determine what was the *lex loci*, or whether there was any.

But now the time has surely come when it is incumbent upon the government to consider and decide this question. The Charter Act has thrown open India to British subjects. The Act No. XI. of 1836 has made them amenable, in all civil cases, to the mofussil courts. The Act No. IV. of 1837 has enabled them to hold land. The Privy Council has solemnly decided that aliens are also competent to do so.

The trade between India and the countries of the west is regularly increasing, and with it the influx of European and American foreigners. The East Indians have become a numerous population, and are every year becoming more so. The want of a *lex loci* will soon become as mischievous in practice as it is anomalous in theory.

The English law, already the law administered to a great portion of the new population in the mofussil, and to the whole of that population in the presidencies, affords a ready and commodious resource. That it is a ready resource is obvious; that it is a commodious one is not so clear, but may, we think, be made so by a little consideration. If we exclude English tenures and English conveyancing, which is founded upon them; and if we separate the rules of substantive law from the rules of procedure by which they are enforced, and in particular from those rules of procedure by which equity is made to modify law, what remains is a system of substantive law to which, we believe, no Christian people could reasonably object. With regard to those who are not Christians, it will be proper to make a further separation of the law of marriage, divorce, and adoption.

The case which we last cited from the reports of the Sudder Dewanny Adawlut is valuable not only for the purpose for which we have used it, but for the more important purpose of exhibiting in practice, what is indeed already clear enough in theory, that English law and English equity may be administered harmoniously instead of discordantly, and also, as far as may be done by one case, what sort of a system they make when so administered.

We firmly believe that English law, taken together with the supplement and corrective of English equity, constitutes a body of substantive law which is not surpassed in the qualities for which substantive law is admired, by any of the various systems under which men have lived. We are, indeed, persuaded that a code framed

framed out of these materials would be a better thing than the materials in their present form; but we know of nothing else that would be better. Yet, notwithstanding these great merits, the rude and cumbrous way in which supplement and corrective of equity is applied to law, the intricate, expensive, and dilatory proceedings which the suitor must have recourse to before he can get the rules of law, or of equity, or of both, applied authoritatively to his case, and the facility which is thus afforded to each party to vex and harass his antagonist, form such an enormous drawback to the merit of the whole *corpus juris*, substantive and adjective taken together, that we should be very sorry to lie under the responsibility of having recommended the introduction of it into any place where it is not *de facto* established. Two sets of courts, one set prohibiting the suitor from proceeding in the other set, or if too late for that, taking from him what the other set has awarded him, is an arrangement which cannot be contemplated with any satisfaction by those who desire that justice should be administered speedily and cheaply, and in a manner intelligible to the people. Yet that is a true account of the relation in which courts of equity stand to courts of law in the English system, and in the modification of that system which has been introduced into the Indian presidencies, the anomalous and extravagant features are exaggerated beyond those of the present institutions.

That the Chancellor should order a man not to apply to the courts of law for his legal rights; that the courts of law should be bound to affect neither to know nor care when the Chancellor has done so or not; that the Chancellor should not be permitted to hear *vivâ voce* evidence, but should be obliged to send his suitors to ask the courts of law to do it for him; that the courts of law in their turn * should not be permitted to order witnesses to be examined by commission, but should be obliged to send their suitors to ask the Chancellor to do it for them; these, and other things of the same stamp, do not look like the productions of political wisdom. We know, in fact, that the only explanation which can be given of them is not to be sought in jurisprudence, but in history.

But the copy of these things which has been established in the presidencies of India bears still fewer marks of design. It might actually happen, according to established rules, that the judges of the Supreme Court sitting in equity should command a suitor not to apply for justice to themselves sitting at law; and that if the suitor should disregard the command, and make the application, they would be bound to be ignorant of what they had done when sitting in equity, and to refuse to pay any attention to it, or even to listen to the statement of it. It is true that this case is never likely to be realized in practice. But arrangements so unreasonable seem to us calculated to bring the administration of justice into contempt, even if they produced no practical mischief. How much more when, as in a case which has lately been decided at this presidency, the unreasonableness of the institutions may be traced in its mischievous effects upon the fortunes of the suitors.

The case we speak of is that of Goopee Mohun Deb *v.* The East India Company. It is a case which exemplifies in a very remarkable degree, and in very many respects, the evils of English procedure. But we shall notice upon this occasion only such parts of it as illustrate the mischievous way in which law and equity are separated. In April 1824, the plaintiff filed a bill in equity. The suit lasted till June 1840, when the bill was dismissed, upon the ground that the plaintiff's remedy, if not barred by lapse of time, was at law. This seems to have been suggested in an early stage of the cause by the then chief justice, but to have been doubted by another judge. In the course of the suit, a vast quantity of evidence was taken, not upon the merits, but upon the question whether certain parties should be added to the Bill. "For three years and a half," says Chief Justice Ryan, "the parties had been in the examiner's office, and an immense mass of evidence, which is now before us, collected." This mass of evidence was not only not upon the merits, but was upon a matter which ought not to have been contested, and the taking of it might have been prevented by either party. The chief justice describes it as "a most expensive and unusual proceeding, which by his, the complainant's own conduct, he has shown to be utterly useless." He afterwards states his view of the course which the defendants ought to have adopted on

* This has been remedied by a late statute, but it is characteristic of the plan; if that is the name applicable to such a distribution of judicial powers.

(B.) No. VII.
Petitions of East Indians and Armenians.

on this point, and adds, " If I am correct in this view, then the useless expense and unusual proceeding in going to the examiner's office on the pleas was partly occasioned through the fault of the defendants, who ought not to have allowed that course to have been pursued."

Upon this part of the case, Mr. Justice Grant observes, " It is too late now to inquire upon what ground the court allowed these pleas, or to lament that it did not intimate to the plaintiff that he had mistaken his remedy. The plaintiff was advised to take the very unusual and calamitous step of taking issue in fact upon these pleas which had been allowed in law. Accordingly evidence was taken at an enormous expense and prodigious length, which occupied three years."

Mr. J. Seton expresses himself to the same purpose.

After all this enormous mass of useless litigation and expense, and after the lapse of 16 years, the bill was dismissed, it being clear that the complainant had a good claim in fact, and equally clear that he ought to have enforced it at law, and not in equity.

" It is not without reluctance," says Mr. J. Seton, " that the court has come to its final conclusion, as the effect of it is, that after a protracted litigation and expense, the plaintiff is remitted to his original rights (which are still undecided, and incapable of being decided, from the mode which has been adopted by him of enforcing them), with all the disadvantage which may have been incurred by the delay which has taken place in ineffectually prosecuting them."

We have said above that we notice this case only for the purpose of illustrating the mischievous way in which law and equity are separated in English procedure; we have now, therefore, to remark, in explanation, that we have not fallen into the error of attributing to this separation the delay, vexation, and expense of this suit. The mischievous effect which we attribute in this case to the separation of law and equity is, that after all this delay, vexation, and expense, the parties are not advanced a single step towards the decision of the question between them. The court was, at the conclusion of the case, in possession of all the material facts; through the pleadings, and the evidence taken in the examiner's office, and the admissions of counsel, it was in possession of all that was necessary to decide the case at law, if the rules of English procedure had permitted it to do so.

But the rules of English procedure do not permit this rational course; and instead of it, a spectacle is exhibited which must surely be shocking to every lover of justice. All the professional acumen of the judges, stimulated by the sense of justice and the feeling of commiseration, is exerted, and exerted in vain, to find a ground on which the plaintiff's case may be rested in equity. They are forced, by the constitution of their court, to tell him that he has mistaken the nature of his case; that his remedy, if not barred by lapse of time, is at law; that is to say, that if he is not precluded by lapse of time, he must go to the other side of the court, where, finding the judges ignorant of all that he and they have been doing on this side, he must state and prove his whole case over again, in a different form. This, if his remedy at law is not barred by lapse of time. If his remedy at law is barred, he is to be put, indeed, to no more trouble and expense; but he is to be punished with the denial of his admitted rights, not for any misconduct he may have been guilty of in the course of the suit, but because, in a court of law, he must be held to have slept over his rights; he must be considered as having neglected to institute proceedings during the last 16 years, though, during all that time, he has been proceeding in the same Supreme Court, before the same judges, but unhappily sitting on a different side of it. Such is the scheme of procedure according to which the principles of English law and English equity are applied to the transactions of life; and no one can be surprised that persons, not having sufficient acquaintance with the subject to distinguish accurately between the procedure and the substantive rules, should look upon the whole system with the distaste and alarm which ought to be excited only by one portion of it.

If such a case as this had occurred in a mofussil court, being, as each of them is, not a court with two sides, one deciding according to law and the other according to equity, but a court deciding according to law as modified and corrected by equity, this frightful waste of time and money could not have taken place.

The court having been once fairly put in possession of the facts by the pleadings and evidence, would have proceeded to decree to the plaintiff his legal rights, if there were nothing inequitable in them; if there were, then his legal rights modified and corrected by equity. This is what, as we have seen, the court of Sudder

Dewanny

Dewanny Adawlut actually did in the case we last cited from the reports of that court.

There is nothing, then, in the English substantive law which prevents it from being easily adapted to the condition of all persons in India, not Hindoos or Mahomedans.

We know that it will be considered a great boon by the large and increasing class whose petition has given rise to this Report.

We learn as much respecting the Armenians from their petition, which we have already noticed; for, after setting forth the destitution of their legal condition, they add, "As Armenians have ceased to be a nation since the year of our Lord 1375, and no trace of their own law is now to be discovered, your petitioners humbly submit that the law of England is the only one that can, upon any sound principles, be permitted to prevail, and that it is moreover the law which was promised to Armenians at the time of their settlement in the country."

At the end of their petition they give a copy of an agreement between the East India Company and Cogee Phanoos Calender, an eminent Armenian merchant. This agreement is dated 22d of June 1688, and contains what they here construe as a promise of English law. It is of course unnecessary that we should discuss either the validity or the meaning of the agreement, as it is the wishes only, and not the rights of the Armenian people with which we are here concerned.

We have no reason to think that English law, thus adapted to the condition of British India, will be considered objectionable by the Portuguese.*

We believe that in introducing it as the *lex loci* of this country, the Legislature will be doing no more than giving an express sanction to that which ought to have taken place tacitly, according to the analogy of the general principles of international jurisprudence.

Lastly, we are satisfied that it is very much for the interest of the subjects of this Indian empire, that during the considerable interval which must elapse before codes of substantive law can be prepared, the law of the mofussil should be assimilated to the law of the presidencies; that is to say (speaking, however, in terms which, to be rigorously accurate, require some qualification), should be the Hindoo law for Hindoos, the Mahomedan law for Mahomedans, and the English law for everybody else.

The future proceedings of our Commission in regard to substantive law will then be confined to the preparation of three codes founded upon these three laws, and to the framing of provisions, as far as that can be done beforehand, for the cases in which they may come into collision.

What defects there may be in the procedure of the Company's courts, and what may be the proper remedies for them, are considerations which we must reserve for the general code of judicial establishments and procedure, or for other special reports. But the measure we are now recommending renders highly expedient, if not absolutely necessary, the anticipation of one of the provisions of that code. We mean the creation of a high court of appeal at each presidency, or rather of a college of justice, containing many courts of appeal; which college of justice is to be composed of the judges of the Supreme Court, and of the judges of the Sudder Dewanny Adawlut. We need not now discuss the question whether there should be one, or more than one judge, in each court of appeal. The college of justice will at any rate be divided into several courts, and, in the distribution of causes to the several courts, attention will of course be paid to the special qualifications of the different judges; and in all appeals from decrees made under the law which we are recommending, the appellate court will be held by a judge of the Supreme Court, with or without associates. It is a very fatal mistake, according to our view of the matter, to suppose because judges having a profound knowledge

* With regard to the Parsees, there may be some doubt; that large portion of this race which is to be found in Goojrat and on the coast north of Bombay might possibly feel some discontent at being included in the proposed Act. They are purely Asiatic people, and whatever they have of positive law, to which they are entitled under the Bombay Code, consists of such of their national customs as can still be ascertained, and of such as they have borrowed from the Hindoos. It will be seen that we propose to give them, as to all others who are interested, an opportunity of expressing their opinions upon the measure which we are recommending.

ledge of the rules of English substantive law, have hitherto been accessible to the suitors only through a procedure encumbered with such unreasonable and mischievous technicalities as those which defeated justice in the case of Goopee Mohun Deb. *v.* The East India Company, that therefore such a profound knowledge of substantive law is itself a thing not to be desired in the administration of justice. It is another great mistake, and practically almost as fatal a one, to suppose that these two things, a profound knowledge of substantive law, and a mischievously technical method of applying it to the affairs of men, are inseparably connected; they are in truth only accidentally, though they have hitherto been very constantly connected.

Reverting to the case of T. Hoo *v.* Peter Marquis, let us suppose that case, instead of being decided in appeal by the Sudder Dewanny Adawlut, upon the opinion of the Advocate-general, to be decided by a judge of the Supreme Court, sitting as a member of the college of justice, and we have an administration of English law combined with equity, to which, in many respects, the suitors of the mother country might look up with envy. There will still remain much to be corrected in the courts of original jurisdiction. There will remain, too, what is perhaps incapable of complete correction, the inexperience of the mofussil judges in English law. But, instead of hostile courts, some administering law, some equity, or a court divided against itself, administering sometimes law, sometimes equity, there will be a set of courts (in the highest of which the greatest legal learning in the country will be found), each court giving to the suitor itself, instead of telling him that he will find it elsewhere, that measure of justice to which he is entitled by law as combined with equity.

As it is our meaning that the appeals under the new law should be decided by judges of the Supreme Court, it may seem that it was unnecessary, upon this occasion, to speak of the institution of a college of justice consisting of those judges and the judges of the Sudder Dewanny Adawlut; but we do this for the purpose of showing that the measure we are now recommending is an essential part of the general scheme which we have in contemplation. Another measure corresponding to this will probably, in like accordance with the general scheme, be recommended in a report we are now preparing upon judicature and procedure, in the places subject to the jurisdiction of the Queen's courts. We shall probably there propose that the appeal from the new courts of original jurisdiction in the presidencies shall lie to the colleges of justice, and any cases in which the peculiar knowledge possessed by the judges of the Sudder Dewanny Adawlut may be useful, will of course be decided in appeal by them, or, at least, with their assistance.

The recommendations we have now the honour to submit, are:

1. That an Act be passed declaring and enacting that so much of the law of England as is applicable to the situation of the people, and as is not inconsistent with any Regulation of the Codes of Bengal, Madras, and Bombay, or with any Act passed by the Council of India, shall be taken to be the law of the land throughout British India, except the places subject to the jurisdiction of Her Majesty's courts; and that all persons shall be subject to that law, except Hindoos and Mahomedans. That the British statutes passed since the 13th year of King George the First shall not be considered as part of the law; but that the Acts of the Council of India, which introduce the provisions of British statutes into India, shall be considered as part of the law, subject of course to the same limitations and exceptions as the rest of the law.

2. The general limitation comprised in the words "so much as is applicable to the situation of the people," would of itself be sufficient to exclude all that would be inconvenient in English law, and therefore to exclude English tenures, and the system of conveyancing which is founded upon them. Upon this point it may be as well to quote the words of Sir W. Blackstone, when he is speaking of an inhabited country colonized by Englishmen, which it will be recollected is the case to which we have ventured to compare that of the English in India.

Illustrating the expression, "So much as is applicable to their own situation," he says, "What shall be admitted and what rejected, at what times and under what restrictions, must, in case of dispute, be decided in the first instance by their own provincial judicature, subject to the revision and control of the King in Council." Now it would certainly be surprising if any court in this country were to hold that English tenures and conveyancing are applicable to the situation of the

the people. Nevertheless, in a matter of such vast importance, it will be the safest course to exclude English tenures and conveyancing by express words*.

3. Our second recommendation relates to a modification of English law which might be made by the courts in administering it. But there is one change which we think desirable, and which requires direct legislative sanction.

We recommend that the interest, whatever may be its extent, which any person, not being a Hindoo or Mahomedan, may have in real property situate without the limits of the local jurisdiction of Her Majesty's courts, shall go to the executor or administrator of such person, and be distributable, according to the Statute of Distributions, in like manner as personal property.

4. Our fourth recommendation is, that all questions of marriage, divorce, and adoption of persons not Christian, shall be decided according to the rules of the sect to which the parties belong.

5. Our fifth recommendation is, that a college of justice shall be erected at each presidency, consisting of the judges of the Supreme Court and of the judges of the Sudder Dewanny Adawlut, and that in all appeals from decisions in the mofussil under the new law, the appellate court shall consist of one judge of the Supreme Court, with or without associates.

It will be necessary that the appeals from decisions in the upper provinces in the Bengal presidency under the new law be heard at Calcutta.

Although we have endeavoured to show that, according to the analogy of the general principles of international jurisprudence, the English law became the *lex loci* of British India as soon as it became British; and although, if that doctrine is correct, the proposed law is in its nature declaratory, still we think it right that, under the very peculiar circumstances of the case, the proposed law should only operate upon the future, and that special provision should be made for the past. It is a very general and certainly a very useful maxim of jurisprudence, that every person must be taken to know the law of the country in which he resides. But we think that in this case that maxim ought to be relaxed, and that in all suits between persons not being Hindoos or Mahomedans, brought in respect of any transaction prior to the passing of the Act, the judge should be authorized to take into his consideration what law the parties to the transaction may have supposed themselves to be living under, and to decide according to equity, following that law.

If the government shall think fit to adopt the principles contained in these recommendations, we shall of course be ready to prepare an Act containing all the details which may appear to be necessary for carrying them into effect; but as the interests of many classes would be materally affected by such a law, we would, for the present, suggest only that this Report should be printed and circulated, in order that those classes may have an opportunity of considering the measure, together with the reasons on which it is rested, and of petitioning government for or against it.

Our president, Mr. Amos, though agreeing in the principal recommendations of the Commission, yet differing in his views upon some points, has thought it advisable to record his sentiments in a separate Minute, which is annexed to this Report.

We submit this our Report for the consideration of your Lordship in Council.

(signed) *A. Amos.*
C. H. Cameron.
F. Millett.
D. Eliott.
H. Borradaile.

Indian Law Commission,
31 October 1840.

MINUTE by the Honourable *A. Amos*, Esq.

IT appears to me that the practical questions connected with the subject of our Report are, first, whether the usage which has prevailed of administering for all persons the law or customs of the countries or sects to which they respectively belong,

* It has already been enacted by Act No. IV. of 1837, that all rules which prescribe the manner in which property in land may be acquired and held by natives shall extend to all subjects of Her Majesty.

(B.) No. VII.
Petitions of East Indians and Armenians.

belong, should now be modified by legislative enactment? And, secondly, if it be expedient to modify, what kind of modification is it most expedient to introduce?

There appear to be the strongest reasons for an extensive modification of the existing usage. In many instances great perplexity and uncertainty has prevailed in ascertaining the description of law or customs by which a case is to be governed; in others, sometimes a separate, and sometimes a superadded difficulty has arisen in endeavouring to discover what the governing law or customs prescribe.

A great improvement in the administration of the justice of the country must necessarily take place, in proportion as we remove doubts with regard to the species of law to which a judge shall, in each case, refer, and as we make the ordinances of that law accessible and intelligible to him. According to the present usage, judicial inquiries have frequently to be made concerning the species of law which is to be administered to certain classes of East Indians and of Portuguese. And the species of law which is to be administered being ascertained, the judge is frequently obliged to investigate the obscure and doubtful customs of Armenians and of Indian Portuguese, and it is occasionally necessary to refer, for the decision of matters originating and terminating in India, to the systems of law prevalent in France, Holland, America, China, and every part of the world. Hence has arisen a variable and unsatisfactory state of law, and great uncertainty with regard to transactions connected with property belonging to large classes of individuals, many of whom are in the possession of great wealth.

An important objection may be made to any change in the rule of consulting the law or customs of the country or sect to which each individual belongs, in cases where particular classes may have cherished a reasonable confidence of being governed by a law or customs to which they are attached, which law or customs are reasonably definite, and with which, on grounds of justice or policy, it would be inexpedient to interfere. The validity of this objection will be universally recognised in the cases of Mahomedans, Hindoos, Jews, and, perhaps, of Parsees, though it is to be hoped that the laws of these different classes may, at a future period, be united, to a considerable extent, in one general system of law for all the inhabitants of India. But I apprehend it is obvious that the objection does not apply to East Indians, Armenians, Portuguese, or foreigners in general, whether European or Asiatic, preserving, however, the *lex domicilii*, in those cases in which it is preserved by the English law to foreigners in England. And where particular classes are themselves desirous of the change, I conceive that not only all objection is removed, but a strong additional reason for modifying the present usage of courts is presented.

Secondly. If the usage of the courts is to be modified, I think there can be little difference of opinion, that the most expedient course is to establish the English law, with such exceptions and qualifications as may be convenient for the government of British subjects, and of all those who are not, like the Mahomedans and Hindoos, to be governed by their own peculiar laws. And for the sake of uniformity, it may, perhaps, be expedient to modify the English law, even further than would be proper if British subjects were alone concerned.

With regard to the exceptions and qualifications with which the English law ought to be introduced, I am inclined to agree, in the first place, that questions of marriage, divorce, and adoption, should be excepted, though it is proper to observe that such exceptions are by no means usual according to the practice of nations.

The administration of law modified by equity, instead of separate courts of law and equity, held before the same or different judges, is an arrangement which necessity and convenience dictate in the mofussil. Such a practice must, I conceive, have been adopted in all cases falling under Act No. XI. of 1836. I think, however, it should be very distinctly stated, that the equity so to be administered means the defined principles of the English Chancery Courts, which may sometimes be opposed to the intentions of parties, and the supposed "equity and good conscience" in a particular case, for the sake of general rules.

It will be generally admitted that the common simple forms of conveying property, and expressing contracts of various kinds which are used in the mofussil, should be as effectual as they have always been. In cases of mortgage, sale, lease, or the like, it would be extremely inconvenient to subject East Indians, Portuguese, Armenians, and even British subjects in the mofussil, to the observance of the technicalities required in English legal instruments. But this departure from English law, may perhaps require some qualifications; for instance, it may, on consideration, be thought advisable to insist upon compliance with some of the English provisions,

provisions with regard to the necessity of certain contracts or undertakings being expressed in writing; and the formalities required by the English law of wills, simplified as they have recently been, may be thought not unsuitable to the circumstances of the mofussil, and, in the opinion of British subjects at least, may be deemed essential to the secure succession to property. Upon such points I do not anticipate any material difference of opinion among the members of the Commission.

I have some doubts with regard to the general supersession of the English laws of tenure and of conveyancing, or rather with regard to the latter, permitting the use of technical forms, but denying them any imperative technical operation, except as consonant to "equity and good conscience," in the meaning according to which those terms are understood in the mofussil.

It may be expedient to define, with greater particularity than may be thought necessary for the immediate object of the Report, what is embraced under the laws of tenure and conveyancing. The parties to be affected by the proposed enactments, and the judges in the mofussil who are afterwards to administer them, may not be expected to distinguish nicely between the rules of tenure and other rules limiting or prescribing the enjoyment of real property. For example, I conceive that it might not be obvious that the Commissioners, in what they have said in regard to superseding the law of tenure, are by no means expressing any opinion concerning the propriety of superseding the English laws restrictive of perpetuities, by which parties are precluded from accumulating enormous masses of wealth for remote successors, and debarring the free alienation of their property for centuries.

A considerable part of the law of tenure and conveyancing, and of other divisions of the law of England, affecting both real and personal property, must fall of itself, for want of means of application in India, without any express exception. This is the case with regard to a large portion of the common and statute English law, introduced bodily into Calcutta at the time of granting a charter to the Supreme Court.

It appears to me that there is so much of the English laws of tenure and conveyancing, especially if a large interpretation be given to these terms, which is essential to the complete and secure enjoyment of property by a highly civilized people, that I should not feel disposed to recommend the dispensing with them generally, though particular exceptions may be very proper, and the free use of the most simple kind of conveyances be indispensable. As it is not proposed on the present occasion to alter the English law for the presidency towns, I think the departure from the law of the presidencies, in regard to British subjects having property in the mofussil, must be inexpedient, where the necessity for it is not of a very cogent nature.

With regard to the succession to real property according to the statute of distributions, it is a question requiring much deliberation, both as to the probability of the law leading to a multiplied partition of property, and as to the consequences of such partition with reference to the circumstances of India. Moreover, it is to be considered that the proposed rule will have the effect of establishing a different law of succession for British subjects in the mofussil from that which obtains in the presidency towns and in England. Under all circumstances, I do not feel prepared to recommend this departure from the law of England on the present occasion, though the succession to real property in the mofussil is a subject upon which in Council I should be anxious to invite discussion.

As to the establishment of a court of justice composed of the judges of the Supreme and Sudder Courts, it may be expected that under the proposed law appeals will sometimes involve points which only an English lawyer would be competent to decide, and sometimes points upon which it would be desirable that both Her Majesty's and Sudder judges should unite in a decision; but, judging from the experience of what has occurred since the passing of Act No. XI. of 1836, it is probable that for some years the number of appeals of this nature will be small. A temporary expedient might be resorted to, by enabling the courts of the mofussil to state questions of English law distinct from matters of fact, for the opinion of a judge of the Supreme Court, before whom the parties might be at liberty to argue the points. Ultimately, I think, a court of the nature proposed in the Report will be found a useful if not a necessary measure. It may also deserve consideration whether such a court should not merge in an appellate court having jurisdiction over all the tribunals of India.

(B.) No. VII.
Petitions of East Indians and Armenians.

These being my views on the subject of the recommendations contained in the Report (which I hope will be found to differ but slightly from the views of my colleagues), I have further to add, with the greatest deference, that I do not attach much importance to the consideration of the questions, what ought to have been the *lex loci*, after the conquest of India by the British arms; or what, according to general law, it ought to be now, provided the usage which has prevailed were superseded and nothing were set up in its place. I am happy to find that such a very able and learned argument can be adduced to show that something very similar to what is expedient now ought always to have been the rule of law; but I do not feel prepared to give a confident assent to the conclusion at which the argument arrives. Neither, if I thought it material, do I believe that I could present any other view of the question of a *lex loci*, as applicable to the peculiar circumstances of India, which I should deem wholly satisfactory. I am glad to think that the intricacies of that question throw no practical difficulty in the way of the proposed arrangements.

(signed) *A. Amos.*

—(C.) No. I.—

(C.) No. I.
Papers on Slavery in India.

PAPERS CONNECTED WITH LAW COMMISSIONERS' REPORT ON SLAVERY IN INDIA.

(No. 29.)

Legis. Cons. 15 Feb. 1840-41. No. 1.

From *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission, to *F. J. Halliday*, Esq. Junior Secretary to the Government of India, Legislative Department, Fort William.

Sir,

I AM directed by the Law Commissioners to transmit to you, to be laid before the Right honourable the Governor-general in Council, so much of their Report upon Slavery in India as is printed. The Law Commissioners understand this to be in accordance with the wishes of Government. The remainder of the Report will be transmitted as soon as the printing is completed.

I have, &c.

Indian Law Commission,
5 October 1840.

(signed) *J. C. C. Sutherland,*
Secretary.

P. S.—The first Appendix of the Report on the evidence taken by the Commission also accompanies.

(No. 32½.)

Legis. Cons. 15 Feb. 1841. No. 2.

From *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission, to *F. J. Halliday*, Esq. Junior Secretary to the Government of India, Legislative Department.

Sir,

I AM directed by the Law Commissioners to transmit five printed copies of the General Report on Slavery in India, together with the like number of printed copies of the prior Report, dated 1st February 1839.

I have, &c.

Indian Law Commission,
8 February 1841.

(signed) *J. C. C. Sutherland,*
Secretary.

(No. 33.)

From *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission, to *F. J. Halliday*, Esq. Junior Secretary to the Government of India, Legislative Department.

Legis. Cons. 15 Feb. 1841. No. 3.

Sir,

On the 8th instant, by desire of the Indian Law Commission, I had the honour to forward to you five printed copies of their General Report on Slavery in India, together with the like number of printed copies of their prior Report, dated 1st February 1839.

2. By the Commissioners' desire, I now forward with this five complete copies of the printed Appendices, to be kept with the General Report to which they belong.

3. The rest of the impression of the above official papers, except the copies reserved for the use of the Commission, will be sent to you when properly arranged and stitched.

I have, &c.

Indian Law Commission, 12 February 1841.

(signed) *J. C. C. Sutherland*, Secretary.

(No. 203.)

Extract from the PROCEEDINGS of the Right honourable the Governor-general of India in Council, in the Political Department, under date the 18th January 1841,

Legis. Cons. 6 Sept. 1841. No. 1.

(No. 2800.)

To *T. H. Maddock*, Esq. Secretary to the Government of India.

Sir,

With reference to Mr. Chief Secretary Reid's letter, dated the 18th October last, regarding the measures adopted by this Government for the suppression of the slave trade, I am directed to transmit to you, for the information of the Right honourable the Governor-general of India in Council, copy of a communication from the agent for the governor at Surat, dated the 4th instant, reporting the number of slaves imported into the Portuguese settlements in India during the last three years.

Political Dep.

2. In forwarding this communication I am desired to observe, that, although the Honourable the Governor in Council is not of opinion that the information therein contained can be entirely relied upon, still it is satisfactory to observe, that the number of slaves supposed to have been recently imported into the Portuguese settlements in India is considerably diminished.

I have, &c.

Bombay Castle, 31 December 1840.

(signed) *J. P. Willoughby*, Secretary to Government.

(No. 101 of 1840.—Political Department.)

To *J. P. Willoughby*, Esq. Secretary to Government, Bombay.

Sir,

I have the honour to acknowledge the receipt of Mr. Chief Secretary Reid's letter (No. 2244), dated the 15th of October last, requesting me to forward a statement showing the number of slaves imported into Demaun and Dieu during the last three years, and the average progressive increase or decrease in number during each year.

2. In reply I beg to report, for the information of the Honourable the Governor in Council, that I have used my utmost endeavours to obtain the required information. Such as I have received, I fear, cannot be depended on for its

 accuracy;

(C). No. I.
Papers on Slavery in India.

accuracy; and even if we were to apply to the Portuguese authorities, I very much doubt whether they would afford an account that could be implicitly relied upon.

3. The following information I have collected from an individual well acquainted with the resources of Demaun and Dieu: that for the last two or three years there have been very few slaves imported into these places, which is to be attributed, in a great measure, to the vigilance of the British Government, though in former years the number of slaves imported into the three Portuguese settlements of Goa, Demaun, and Dieu averaged from 250 to 300 per annum.

4. There were some vessels last year, the property of one Moonajee Wullajee, which were bringing slaves from Mozambique to Demaun and other Portuguese ports, but which were intercepted by Her Majesty's ships.

5. During this year no ship has arrived at Demaun from Mozambique. It appears that the number of slaves imported in the years 1837, 1838, 1839, into Demaun, were as follow:

In 1837	- - - - - - -	from 10 to 15.
1838	- - - - - - -	from 8 to 10.
1839	- - - - - - -	from 5 to 7.

Into Goa and Dieu, during these years, from 15 to 20.

6. In reference to the 2d paragraph of the communication now under reply, I am not prepared to propose any measures beyond those already in operation for preventing the importation of slaves into the Portuguese territories.

I have, &c.
(signed) *G. L. Elliot,*
Agent for the Honourable the Governor.

Surat, Office of Agent for the Governor,
4 December 1840.

(True copy.)
(signed) *J. P. Willoughby,* Secretary to Government.

Ordered, that, in continuation of extract from this department, dated 9th November last (No. 1298), a copy of the foregoing despatch be sent to the Legislative Department for communication to the Law Commission.

(A true extract.)
(signed) *T. H. Maddock,*
Secretary to the Government of India.

(No. 215.)

Legis. Cons. 6 Sept. 1841. No. 2.

From *H. Chamier,* Esq. Chief Secretary to the Government of Fort St. George, to *T. H. Maddock,* Esq. Secretary to the Government of India.

Sir,

Judicial Dep.

From the Officiating Secretary to the Government of India, dated 7 January 1839, No. 6.
To the Officiating Secretary to Government of India, dated 29 January 1839, No. 85.
From the Junior Secretary to the Government of India, dated 22 June 1840, No. 98.

With reference to the correspondence noted in the margin, I am directed by the Right honourable the Governor in Council to transmit, for submission to the Government of India, the accompanying copy of circular order (No. 132) of the Foujdary Udalut.

His Lordship in Council desires me to add, that the judges were requested, on the 2d instant, to explain, with reference to the order *in question, how the opinion of their law officers, on the subject of slavery, affects the churmiah slaves of Malabar,* and the other prædial slaves in Tanjore and other parts of the country, and that the reply, when received, will be immediately communicated for the information of the Government of India.

I have, &c.
(signed) *Henry Chamier,*
Chief Secretary.

Fort St. George,
15 March 1841.

Legis. Cons. 6 Sept. 1841. No. 3. Enclosure.

Question. The prisoner, who is a female dher slave of the prosecutor's, is charged with having, one month previous to the 18th November 1840, eloped from the prosecutor's, and not come again to work at his house.

The court direct their law officers to declare whether the prisoner has committed any offence under the Mahomedan law; and if so, how the offence is punishable?

Answer. The prisoner above referred to is not punishable under the Mahomedan law for her elopement, because the legislator has not propounded any punishment to the slaves of this country, in the same manner as he denounced Tazeer and Tadeeb to a true slave.

" With reference to your answer above recorded, the court desire that an explanation may be given of the difference drawn by you between a true slave and a dher slave."

Answer. She who may have been acquired by way of booty in a Mussulman war is called a " true slave," who can be sold and purchased. If such slave shall go away from the house of her master without his permission, she is liable to punishment in proportion to her guilt.

As regards the slaves of this country (whether they are of dher or paria caste, or of any other caste), the people receive them from their parents, either during famine or at other times; such slaves are not, under the Mahomedan law, fit to be sold and purchased. If they go away from the house of their masters without their permission, they are at liberty to live wherever they please, and they are not liable to any trial under the law in question.

(signed) *W. Douglas,* Register.

EXTRACT from the Proceedings of the Foujdaree Udalut, under date the 10th February 1841.—(Circular Order, No. 132.)

BY the annexed futwa of the law officers of the Foujdaree Udalut, it appears that the charge in No. 63 constitutes no crime under the Mussulman law; and as the futwa is of much importance on the subject of slavery, it is resolved to communicate it to all the judicial and magisterial officers, by means of the four provincial courts; and to communicate it to Government, for the information of the Government of India, now, it is understood, engaged in the consideration of the subject of slavery generally.

(True extract.)

(signed) *W. Douglas,* Register.

(No. 311.)

Legis. Cons. 6 Sept. 1841. No. 4.

From *H. Chamier,* Esq. Chief Secretary to the Government of Fort St. George, to *T. H. Maddock,* Esq. Secretary to the Government of India.

Sir,

Judicial Dep.

WITH reference to para. 2 of my letter No. 215, dated the 15th ultimo, I am directed by the Right honourable the Governor in Council to transmit, for the information of the Government of India, the accompanying copies of letters received from the register of the Foujdaree Udalut, dated the 22d ultimo, and 13th instant, explaining how the opinion of the law officers of that court on the subject of slavery, circulated with their order, No. 132, affects the churmiah slaves of Malabar, and the other prædial slaves in Tanjore and other parts of the country.

I have, &c.

Fort St. George, 19 April 1841.

(signed) *H. Chamier,* Chief Secretary.

(C.) No I.
Papers on Slavery in India.

Legis. Cons. 6 Sept. 1841. No. 5.

(No. 43.)

From *W. Douglas*, Esq. Register Sudder Foujdaree Udalut, to the Chief Secretary to Government of Fort St. George.

Sir,

I AM directed by the judges of the Foujdaree Udalut to acknowledge the receipt of the extract from the Minutes of Consultation in the Judicial Department, under date the 2d March 1841, No. 192, requiring them to explain how the opinion of their law officers on the subject of slavery, circulated with their order, No. 132, to the subordinate judicial authorities, affects the churmiah slaves of Malabar, and the other prædial slaves in Tanjore and other parts of the country.

2. In reply, I am desired to observe, that the opinion of the Mahomedan law officers above adverted to, applies to males as well as to females, and to the prædial slaves in Malabar, Tanjore, and elsewhere.

3. The first judge deeming further explanation requisite, has entered in a separate Minute his dissent from this letter.

Foujdaree Udalut, Register's Office, 22 March 1841. (signed) *W. Douglas*, Register.

(No. 58.)

From *W. Douglas*, Esq. Register of the Foujdaree Udalut, to the Chief Secretary to Government of Fort St. George.

Sir,

WITH reference to the extract from the Minutes of Consultation, under date the 5th instant, No. 266, I am directed by the judges of the Foujdaree Udalut to transmit to you, to be laid before Government, a copy of the Minute of the first puisne judge referred to in para. 3 of the letter from this court, dated the 22d March 1841.

Foujdaree Udalut, Register's Office, 13 April 1841. (signed) *W. Douglas*, Register.

MINUTE of the 1st Puisne Judge.

I THINK we should add that, in fact, our criminal or Mahomedan law, as well explained at page 30 of Sir W. Macnaghten's Introduction to its principles, maintains, that "they only are slaves who are captured in time of war (Jihaod, a religious war, is meant), or who are descendants of such captives."

See chap. 6 of Sir Thomas Strange's Elements of Hindoo Law.

For a breach of slavery such alone are punishable by the criminal code; at the same time, there can be no doubt that the civil code or Hindoo law, on the contrary, formally acknowledges prædial slavery, and also other forms of bondage; and though sanctioned by immemorial custom, the civil law stands contrasted in this respect with the criminal code, which lends it most slender and confined support.

(signed) *A. D. Campbell*, 1st Puisne Judge.

(True copy.)
(signed) *W. Douglas*, Register.

(True copy.)
(signed) *H. Chamier*, Chief Secretary.

Legis. Cons. 6 Sept. 1841. No. 6. Slavery in India.

MINUTE by the Right Honourable the Governor General, dated 6 May 1841.

THIS subject, so fully treated in the present Report of the Law Commissioners, is undoubtedly a most difficult and extensive one; but the evidence and information which they have collected may, I trust, enable us to form some clear conclusion

conclusion, such as shall suffice to determine the immediate practical course of the Government.

I will not enter into much detail in pointing out the generally mild character of what is termed slavery in this country, or in marking how the agrestic servitude which exists in several* of its districts is connected chiefly with distinctions of caste, and will be upheld, notwithstanding any measures of the public authorities, by the force which national habit and opinion have imparted to those distinctions. The facts relating to the various descriptions and modifications of bondage, as prevailing in different provinces, are set forth by the Commissioners with distinctness and precision. On the effect of caste in maintaining agricultural servitude, even under circumstances in many respects favourable to freedom, instructive particulars will be found in the evidence respecting the districts of Coorg and Malabar. In Coorg many of the slaves emancipated by Government on its own estates have, from various causes, been led to destroy their certificates of freedom, and to place themselves again in servitude under their former masters. In Malabar all the influence of the English proprietor of an estate cannot obtain for any of his labourers a greater degree of respect or privilege than the strict local usages of caste allow to them. They remain, whatever the liberty of action which he accords to them, as degraded as before; for they cannot raise themselves above the low class to which they belong, and must mix only on the terms to which they have been accustomed, with their caste brethren, the chumar slaves of the province.

It is enough to say, that there is obviously little in common between the voluntary subservience to their employers of particular individuals or races in India, and the former oppressive and compulsory slavery of our West Indian settlements.

We must deeply pity and lament, whatever there may be of degradation, poverty, and helplessness amongst the lower classes of our Indian subjects, and their undue subjection, under any form or designation, to those of better birth, to the powerful and the wealthy. It behoves us to watch their condition with a vigilant eye, and to do what may be in the power of the Government for its amelioration; but we ought not, through a misuse of names, to form an erroneous idea of things, or seek violently to disturb relations to which in many cases all who share in them are attached, regarding them, as may so often be observed in respect both to those who render and to those who receive service, as a source of mutual advantage, or even of honour and distinction.

In effect, that which constitutes the essence of slavery may be said to have been already abolished nearly everywhere throughout India. I mean by that essence, an entire subjection, sanctioned and upheld by the law, of an individual and his family to the will of a master, and the absolute claim of property, with the right also and the means of enforcing that claim, of one man over another. It will be found, however, that almost, if not at this time quite universally, a compulsion by a master over his dependent is admitted by our criminal courts; that any force used by him towards his so-called slave is punished, just as it would be if used towards a free man, and that nearly as generally the magistrates do not interfere for the restoration of a runaway slave to his employer.

Under such an administration of the law, what but the tie of general good treatment and a supposed self-interest will prevent a slave from leaving his master and living in freedom?

I may cite a few statements, some from districts in which the name of slavery is yet most prevalent, as showing how important is this practice of the magistrates.

Captain Jenkins says of Assam, "I consider that the Government, by withholding a regulation making it legal to have recourse to the criminal courts for the apprehension and restitution of slaves, have virtually abolished slavery; the means of escape from their owners being so easy, and the difficulty and expense of recovery through the civil court being so great, that no slaves above the age of childhood need be detained in bondage, except with their own free will." Page 335 of Appendix.

The principal collector and magistrate of Tanjore to the like effect: "So long as a slave chooses to remain with his master, he does so, and leaves him for a better Pages 199 & 200 of Report.

* Malabar Tamul districts of Madras, Behar province.

better at pleasure. Nothing but a civil suit, which would cost more than ten years of his labour, can recover him, and being recovered, there is nothing to prevent his walking about his own business as soon as he has left the court which has pronounced him to be the property of another. The magistrates, it seems, decline to assist the master to recover a runaway slave, and leave him to his own resources, which the slave defies. Under these circumstances, mutual interest appears to be really the bond between them."

Page 222 of Rep. The magistrate of Malabar, of the practice of his court in 1836, says, "That the relation of master and slave has never been recognised as justifying acts which would otherwise be punishable, or as constituting a ground for mitigation of the punishment; and the criminal judge adds, that no distinction is recognised in the criminal courts between a free man and slave, which statement is repeated by the court of circuit."

Page 269. And of the usage in the Bombay presidency it is observed in the Report, "An examination of the returns in the Appendix will show how rare, indeed almost unheard of, is a suit in the civil courts against a slave or a third party for recovery of services, property or damage, by abduction or desertion; yet almost all the reporting functionaries agree that a slave owner has a good cause of action in the cases supposed, and possesses rights which cannot be questioned in the abstract, though so difficult of enforcement as not to be worth the attempt in these times."

The criminal law on the subject is, I apprehend, correctly stated in a futwa given 10th February 1841, by the Mahomedan law officers of the Madras Foujdaree Adawlut, in the case of a female dher slave, charged with having eloped from the prosecutor, her master, and not coming again to work at his house. It is to the effect that "the prisoner above referred to is not punishable under the Mahomedan law for her elopement, because the legislator has not propounded any punishment to the slaves of the country in the same manner as he denounced Tozier and Tadieb to a true slave. She who may have been acquired by way of booty in a Mussulman war, is called a true slave, who can be sold and purchased. If such slave shall go away from the house of her master without his permission, she is liable to punishment in proportion to her guilt."

"As regards the slaves of this country (whether they are of dher or paria caste, or of any other caste), the people receive them from their parents, either during famine or at other times; such slaves are not, under the Mahomedan law, fit to be sold and purchased. If they go away from the houses of their masters without their permission, they are at liberty to live wherever they please, and they are not liable to any trial under the law in question." Upon this futwa it is declared by the judges of the Foudjaree Adawlut, in a letter addressed by them to the Government, 22d March 1841, "that this opinion of the Mahomedan law officers applies to males as well as females, and to the prædial slaves in Malabar, Tanjore, and elsewhere." It is pointed out in a separate Minute by Mr. Campbell, one of the judges, that the Hindoo civil law is, in respect to slavery, remarkably contrasted to the Mahomedan or criminal law, and can derive no support from it.

The Mahomedan criminal law being that which, with specific limitations and exceptions, is administered by our courts, there is no reason why any benefit which it gives to persons in a condition of servitude, not of the strict kind that alone it recognises and sanctions, should be in any degree denied or abridged. This exemption from criminal or magisterial process, which alone is summary and effective, leads directly and certainly, as it appears to me, to the destruction of all that is legally coercive in the maintenance of the status of slavery; and we need, therefore, the less dwell on what might be the decrees of our civil courts on questions concerning that status being brought before them.

I believe, however, that for the reasons stated in the futwa above cited, no Mahomedan master could prove a legal title to the possession of a slave at this day, the only legal slaves, under the Mahomedan law, being captives taken in battle, or their heirs. This doctrine has been long ago asserted by the highest authority, and seems to have been affirmed by the Calcutta Sudder Court in the case reported in pages 249 to 251 of the Appendix to the Report before us, and as respects the Hindoo law, which admits of the acquisition of slaves in a number of ways, the cases reported in the following pages of the Appendix will show that whenever as yet cases have been litigated before the Sudder Court,

grounds

grounds have existed for rejecting the claim of servitude against the parties sued as slaves.

I would only at present observe on the point of civil jurisdiction, that my attention has been drawn to the statement of the judge of Sylhet, that should a person decreed by the civil court of that district to be a slave "refuse to serve or to comply with the award, he is imprisoned so long as the master desires to pay the subsistence money, in the same manner as other prisoners are confined in the civil gaol under a decree in a regular suit." And I have caused a reference to be made from the Government of Bengal to the Sudder Court, in order that it may be ascertained whether such is a proper and justifiable manner of executing a decree, of which the purport is only to declare that an individual belongs to the servile condition.

P. 136. of Appx.

It is true that the question of civil law is not to be regarded as a mere question of curiosity and legal nicety, and as of no serious practical importance. It is no doubt easy to escape out of the reach of a civil process, yet the possibility that such a process may issue is not without objection, and might occasionally lead to considerable vexation and inconvenience. But I cannot view this condition of the civil law as a pressing and general evil, and I apprehend that it certainly does not admit of any easy and immediate remedy. Such a remedy may form part of a more general measure of jurisprudence. Its principle is, I am informed, involved in intricate questions of law and time, and caution seem to me obviously required for its due investigation and discussion. I would ask, too, for more time for legislation upon the manner in which the state of bondsmen or articled labourers is to be regulated. It unhappily borders nearly upon slavery in some parts of the country, and yet the mode in which its evils are to be limited and corrected, would open to us a wide field of controversy. We may perhaps be satisfied for the present if these men, though subject to the pecuniary penalties of their bonds, are protected, as far as the law can protect them, from all personal infliction or violent coercion on the part of their master.

Even on the graver branch of this great subject, viz. the operation of our criminal and police laws, I have been greatly inclined to the opinion that legislation for the more clear announcement of the protective character of those laws is not necessary, and that the mere lapse of time is in the best possible manner, because surely and quietly, working the complete practical abolition of slavery; that many are not of this opinion, and it may in truth not be otherwise than just and useful that the principles in this respect of the English magistrate, and of the Mahomedan futwa, should have strength and publicity given to them by an express enactment of the British Indian legislature.

I am prepared upon these grounds, and on the evidence and opinions we have now before us, to pass a law declaring that any act which would be an offence if done to a free man, shall be equally an offence if done to a slave, or, as I would rather say, to any one in any condition of dependence on a master, and I would add to such an act that (to the effect of the proposal of two of the Law Commissioners) "no rights claimed as arising out of an alleged state of slavery shall be enforced by a magistrate." Such an enactment would be entirely in consonance with the doctrince of the Mahomedan lawyers which I have above quoted, as applied to the actual state of those classed as slaves in India. I may briefly say, on the contrary opinion of others of the Commissioners as respects the concession of an authority of moderate correction, that I am satisfied, that with our very imperfect police and remotely scattered magistrates, it would not be safe to commit any power of punishment to masters, and that, in fact, we can have no security against their occasional bad character or excited passions other than that of withholding from them all power of personal coercion whatever. Compensation for such a formal withdrawal of authority seems to me out of the question, both because compensation could not be given on a ground so little capable of exact estimation, and because the authority, wherever it is exercised, rests upon no valid ground, and has actually ceased to exist in by far the greater number of our districts. I would not (independently of any reference to the Mahomedan law) allow our magistrates to enforce any rights arising out of slavery, because the state of slavery is one not to be presumed against any person summarily, and would require, were it to be brought for inquiry before a court, the most grave and discriminating consideration.

To the extent here proposed we might, I think, at once pass a law without

(C.) No. I.
Papers on Slavery in India.

reference to England, for the Honourable Court have more than two years ago urged it on us to take that step. But so much more legislation has been proposed in the reports of the Commissioners, that it may be best to refer all the papers for further directions from the home authorities.

I confess that it is my decided impression that the adoption of all the minute and detailed provisions recommended by the Law Commissioners, would much rather impede than advance the object we all have in view. That object is the earliest possible extinction, first practically, and in the end even avowedly, of slavery, in so far as such results can be attained by acts of the Government. But if, as is the intention of one of the recommendations, we connect the public officers with the registry of the sales of persons as slaves, how shall we be able at any future time to treat those transactions as otherwise than perfectly valid, or to deal with claims of consideration and compensation which may be preferred by purchasers? It is undoubtedly most desirable to put an immediate and entire stop to such practices, wherever they may yet partially prevail, as those of the sale of slaves without their own consent, of their sale under any circumstances separately from their families, or of the sale of agrestic slaves separately from the land to which they are attached. But in prohibiting every kind of coercion by the master over the person, and all summary interference of authority for the return of a person claimed as a slave to his assuming owner, we shall in truth do away with all such practices, for no one will be found to purchase that, of the continued possession of which he can have no assurance.

I would for the present be content with legislation to the effect which I have above stated. Compulsory contracts or transfers with the view to prostitution, would, I apprehend, be void, and punishable under the existing law. We shall have a better guarantee for good treatment and easy emancipation at the will of the slave, in the protection from any personal restraint which the law to which I have assented will confer upon him, than in express rules of the kind proposed by the Commissioners. In a word, I would legislate as little as possible now, and that only so as directly to advance the great end of practical freedom, while I would look forward with anxiety to a period when the Government may be enabled to fulfil the design of the British Legislature, by a declaration of the entire extinction of slavery as a state in any manner recognised by our laws.

I would, however, be disposed by a separate law (guarding the national custom of adoption) wholly to prohibit the sales of children, excepting possibly (after the example of the Bombay Regulation of 1827) in seasons of distress, such as follow upon inundation or famine, and under checks which might be then imposed by the Executive Government. Frightful abuses grow out of such sales, and if a stern necessity should seem for any time to require their sufferance, it would, I think, be very necessary to place them under the supervision of the public authorities.

I consider the recommendations of the Commissioners for the better enforcement of the objects of the stat. 5 G. 4, c. 113, as very proper and necessary.

It might perhaps be well, as a part of our measures for the amelioration of the condition of servitude in India, to obtain periodical reports of the state of slaves or bondsmen, and of legal transactions affecting them, in the districts in which such classes are most numerous, and I would particularly ask the Government of Madras to consider whether by any addition to the magisterial force, or to the general strength of the police in Malabar, a proper degree of protection, which may now possibly be in some quarters wanting, would be given to the servile labourers and the scattered agricultural bondsmen of that province.

(signed) *Auckland.*

(No. 350.)

Legis. Cons. 6 Sept. 1841. No. 7.

From *H. Chamier*, Esq. Chief Secretary to the Government of Fort St. George, to *T. H. Maddock*, Esq. Secretary to the Government of India.

Sir,

Judicial Dep.

Para. 1. With reference to my letters, dated the 15th of March and 19th of April last, I am directed by the Right Hon. the Governor in Council to request that

that you will submit, for the information of the Government of India, the accompanying copy of correspondence* with the judges of Foujdaree Udalut, relative to the case of a female slave who was sent up to the criminal court at Honore by the magistracy of Canara, charged with absenting herself and refusing to work, and who was released by the principal sudder ameen, as "the Mahomedan law officers both of the zillah court and of the Court of Foujdaree Udalut had declared that the charge constituted no crime under the Mussulman law."

2. It will be further observed from the last communication of the judges of the Foudjaree Udalut, that a female slave who was committed to the court at Sircy in 1836, and sentenced by the principal sudder ameen to six weeks' imprisonment, was subsequently released by order of that court under the opinion expressed by their law officers, which will be found contained in the extract from their proceedings, dated the 8th of November 1836, annexed to that communication.

I have &c.

Fort St. George,
10 May 1841.

(signed) *H. Chamier*,
Chief Secretary.

(No. 38.—Foujdaree Udalut.)

From *W. Douglas*, Esq. Register of the Foujdaree Udalut, to the Chief Secretary to Government.

Legis. Cons. 6 Sept. 1841. No. 8.

Sir,

I AM directed by the judges of the Foujdaree Udalut, with reference to their circular order of the 10th February 1841, No. 132, to submit, to be laid before the Government, the annexed copy of a correspondence received from the provincial court in the western division, relative to the case of a slave sent up to the criminal court by the magistracy of Canara, charged with absenting herself and refusing to work, and to request that, with the sanction of Government, the same may be transmitted to the Government of India.

I have &c.

Foujdaree Udalut Register's Office,
13 March 1841.

(signed) *W. Doulgas*,
Register.

(No. 30.)

From *Narasinga Row*, Principal Sudder Ameen, Zillah of Canara Honore, to the Register to the Provincial Court of Circuit, Western Division.

Sir,

1. AGREEABLY to the provisions of the circular order of the Court of Foujdaree Udalut, dated the 28th January 1828, I have the honour to request you will lay before the judges of the provincial court the following reference regarding a case which the Mahomedan law officer has declared not to be punishable under the Mahomedan law, but which appears to me to be injurious to the community.

2. The Honore tuhsildar, under instructions received from the joint magistrate, has sent up a prisoner by name Eeroo, a female dher slave, on a charge of having eloped from the house of her master, the prosecutor, Tulgod Vencunna Hegaday of Honore Talook, and subsequently refused to go back to his house.

3. The prosecutor states that he purchased the prisoner with her female infant, since dead, from her master, the first witness, for hoons four, under a deed of sale, about seven months ago; that she accordingly remained and worked at his house in Tulgod village for three or four months, and then eloped to the house of one Vencatputly Naik in Huldepoor village, and that she refuses to come back to the prosecutor's house when required to do so.

4. The

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* From the Register of Foujdaree Udalut, dated 13 March 1841.
Orders of Government thereon, 5 April 1841.
From the Register of the Foujdaree Udalut, dated 28 April 1841.

4. The prisoner states that she does not wish to remain at the prosecutor's house, but would only live with her husband.

5. The first witness deposes that the prisoner was his slave; that he had married her to one Eera, the dher slave of Bhrirma Shetly, resident of Jullnoully village, but that she used to put up in the witness's village and work at his house; that when she had no work at his house, she used to go and remain for some days in her husband's house in Jullnoully village, a distance of one coss; that about six months ago the witness sold her to the prosecutor for hoons four, under a deed of sale; that she accordingly remained at the prosecutor's house for three or four months in Tulgod village, one or one and a half coss distant from her husband's village; that she afterwards eloped to Vencatputly Naik's house at Huldepoor. The second and third witnesses prove the sale of the prisoner by the first witness to the prosecutor for hoons four.

6. Under these ciscumstances a question was put to the moofty of the zillah court, as to whether the prisoner's refusal to go back to the prosecutor's house, was punishable under the Mahomedan law or not, and if punishable, how; he has declared that it is not punishable.

7. As, however, I am doubtful to release the prisoner upon the said reply of the moofty, considering that it may be a dangerous precedent, I request the judges will favour me with instructions for my guidance in the case.

8. I beg to forward herewith the question put to, and the answer obtained from the moofty, with a translation, as also the record of the case, with translations of the criminal proceedings.

I have &c.

Zillah of Canara, Honore,
9 January 1841.

(signed) *Narasinga Row,*
Principal Sudder Ameen.

ORDER issued by Mr. *Maltby*, Joint Magistrate of Canara, to Shamshoodeen, the Tehsildar of Honore.

READ Urzee No. 638: You have made this reference after an inquiry into the petition presented by Venkunna Hegude of Tulgode, in Idoogoongey Magany, complaining of one Venkatputly Naik having retained a dher slave, named Eeroo, and her child, whom he had purchased from one Coopa Hegudy, of Kemnally, and praying that they may be sent for and delivered over to the petitioner. On reference to the record forwarded, it appears that the female, Eeroo, admits that she was the slave of one Coompunna Hegude, and that having been sold to Vencunna Hegude for four hoons, she came and worked at his house for some days, and adds that she is unwilling to go to Venkunna Heguday's house, but wishes to remain at Venkatputly Naik's; that she will pay to the said Hegudy the four hoons purchase-money, and live where she likes. There is proof on the record that the slave belongs to Venkunna Hegudey, and he is not willing to receive the purchase-money and let the slave go, and therefore no order can be passed in this office. You are therefore to order the said Eeroo to go to the petitioner's house, and live and work there as usual, and send her off. If she refuses to go, you are to forward her to the court for her offence, with a commitment, and make a report (to me) forwarding copies of the several documents. The papers received with your petition are herewith returned.

It appears in this case that Venkatputly Naik retained the said Eeroo by persuasion. He is a public servant, and is consequently acquainted with the rules, and therefore has not acted properly in gaining her over. You are therefore to warn him against such conduct in future: Malgee Cusba.

(signed) *E. Maltby,*
Joint Magistrate.

12 December 1840.

QUESTION by the Honore Principal Sudder Ameen's Court to the Moofty of the Zillah Court.

THE master of a dher female married to a dher belonging to another master, but she worked at her master's house, and also used to go to her husband's house,

or

or she lived in her husband's house alone. Now the master of the female sold her to another ryot, residing at a further distance than the village in which her husband resides. The female declines to leave her husband, and says that she will not live with her purchaser. She also says that she will even pay the amount of her value and live with her husband. If a dher female sold by her master should refuse to live with her purchaser, having her husband, is she punishable under the Mahomedan law; if punishable, how?

(signed) *Narasinga Row*,
24 December 1840. Principal Sudder Ameen.

Reply of the Mooftee.

The dher female who says that she will live with her husband and not go to her present purchaser is not punishable under our law.

(signed) *Abdool Cussim*,
29 December 1840. Mooftee.

(True translations.)

(signed) *Narasinga Row*,
Principal Sudder Ameen.

From *W. B. Anderson*, Esq. Second Judge for Register, Provincial Court, Western Division, to the Magistrate of Canara.

Sir,

I am directed by the second judge presiding to transmit to you the annexed copies of a reference, dated the 9th instant, from the principal sudder ameen of Honore, and of the joint magistrate's order under which the case, the subject of it, was sent up to the court by the Honore tahsildar, and to request you will have the goodness to ascertain and report, for the information of the provincial court of circuit, and eventually of the Foujdaree Udalut, whether the said order was issued by the joint magistrate, because he considered any punishment he could inflict on the prisoner would be inadequate to the offence of which she is accused; and also whether any instance can be cited of such an offence having been punished by any of the criminal courts in Canara.

(signed) *W. B. Anderson*,
Provincial Court, Western Division, Second Judge for Register.
18 January 1841.

From *H. M. Blair*, Esq. Magistrate, Uddafry, to the Register to the Provincial Court of Circuit, Western Division, Tillicherry.

Sir,

In reply to your letter of the 18th ultimo, I have the honour to forward copy of a letter, with its enclosures, from the joint magistrate, dated 3d instant, stating that in ordering the committal of the case referred to, he was guided by the circular order of the Foujdaree Udalut, under date the 28th January 1828, which rendered the offence punishable by the criminal court, according to the opinion of the law officer. No. 39. October 1836.

2. In addition to the above explanation, I beg to forward an extract of the disposal of a similar case by the criminal court at Mangalore, in which the claim of the prosecutor was considered to be of a civil nature. No. 40. April 1839.

3. The existing system of slavery in Canara having been recognised by Government, it would seem absolutely necessary that the right of the master to the services of his slave should be protected by law, and as a difference of opinion seems to exist among the Mahomedan law officers as to whether a slave having deserted from his master, and refusing to return to him, is liable to punishment by the criminal court,

Note by the Provincial Court of Circuit:

The magistrate does not appear to have been furnished with an extract from the Foujdary Udalut's proceedings, under date the 8th Nov. 1836.

court, it is desirable that a definite rule should be established on the point; any uncertainty existing on this question must seriously affect the landed interests of this province, and produce a corresponding influence on the Government revenue.

(signed) *H. M. Blair*,
Magistrate.

Magistrate's Cutcherry on Circuit,
Uddafry, 11 February 1841.

From *E. Maltby*, Esq. Joint Magistrate, Sircy, to the Magistrate of Canara.

Sir,

I HAVE the honour to acknowledge your letter of the 28th ultimo, with its enclosures, and to state that I directed the case in question to be forwarded to the court, because I felt that I had no power to award any punishment whatever, as the Foujdaree Udalut decided on a former occasion, when the magistrate of Canara punished a refractory slave, that such cases are not within the cognizance of the magistracy, and should be forwarded to the criminal courts.

As the continued legality of slavery has rendered it necessary to attend to the complaint of masters of slaves, the magistracy have therefore been in the habit of acting upon the above order when the master's right was clearly established, and the slaves would not listen to admonition. It is in my recollection that some cases were forwarded to the court at Mangalore, but I do not recollect the sentences passed, and have not the records to refer to. In North Canara, where slavery is comparatively scarce, the records show that a female slave was committed to the court at Sircy in 1836, for refusing to remain with and work for her master, and was punished by the principal sudder ameen with six weeks' imprisonment, after a reference had been made to the Mahomedan law officer of the zillah court. I enclose, for your information, translated copy of the sentence received from the principal sudder ameen's court on this occasion.

(signed) *E. Maltby*,
Joint Magistrate.

Sircy, Canara, 3 February 1841.

(True copy.)

(signed) *H. M. Blair*, Magistrate.

EXTRACT from a STATEMENT of the CRIMINAL CASES tried by the Principal Sudder Ameen's Court at *Sircee*, for October 1836.

Criminal File Number.	By whom Committed.	Date of Commitment.	Name of Prisoner.	CHARGE.	SENTENCE.
39	Sondory Tahsildar.	22 June 1836	Nagee (female)	--After having been purchased by the prosecutor, and worked with him for some days, refusing to attend and work.	--The prisoner denied that she had been purchased by the plaintiff, and that she had worked for him. It is proved by the evidence that the mother sold the prisoner to the prosecutor, giving a deed of sale, and that the prisoner worked for the prosecutor accordingly. The prisoner derived no benefit by the evidence which she brought forward. Therefore the charge was considered proved, and as the Regulations do not provide for the punishment of such an offence, a reference was made to the moofty of the zillah court, according to the circular order of the Foujdaree Udalut, dated 28th January 1840, and a reply was received that the offence was one punishable under the law. The prisoner was therefore sentenced, after consideration of the time she had been in custody, to six weeks' imprisonment and labour.

(True translation.)

(signed) *E. Maltby*, Joint Magistrate.

(signed) *Zecaboddeen*,
Principal Sudder Ameen.

(True copy.)

(signed) *H. M. Blair*, Magistrate.

EXTRACT from a STATEMENT of PRISONERS sent in by the Magistrate and Police Officers, whose Cases were disposed of in the Month of April 1839.

Number of Case, and by whom Disposed of.	By whom Committed.	Date of Committal.	Prisoner's Name or Names.	Crime charged against the Prisoner or Prisoners.	Mode in which the Prisoners were disposed of; and in Cases in which the Prisoners were discharged, the Grounds of their Discharge.
40 Assistant criminal judge.	- - Additional joint magistrate.	30 March 1839	1. Koleeshetly 2. Bola. 3. Cheekoo. 4. Toombee, *alias* Murgod. 5. Jeboo.	- - The first prisoner is charged with inducing the four last prisoners to desert their lawful master; the four last prisoners (being slaves) with deserting their master.	- - Pursuant to the circular order of the Foujdaree Udalut, dated 20 January 1828, the Mahomedan law officer was consulted as to whether the prisoners were punishable under the Mahomedan law, and if so, to what punishment they were entitled, who declared "that if a slave shall not obey the orders of his master, or desert him, and if any individual shall instigate the slave to do so, both the slave and the instigator are liable to tazer. But it is to be known that the individuals of the dher and other castes in this country sell their children from want of means of support. This sale is not right Unfee religion; and by that sale they do not become slaves according to law, and are not liable to punishment for their disobedience, nor are their instigators liable to any punishment. On an examination of the case the assistant criminal judge is of opinion that the matter is not cognizable by a criminal court, inasmuch as it involves the proprietary right to the slaves. The prosecutor is accordingly directed to seek redress by a civil action.

(True copies and translations.)
(signed) *George Bird*, Acting Third Judge for Register.

(True extract.)
(signed) *G. Bird*, Criminal Judge.

(True copy.)
(signed) *H. M. Blair*, Magistrate.

(True copy.)
(signed) *W. Douglas*, Register.

His Lordship in Council desires to be informed what decision has been come to in respect to the female slave more immediately connected with the subject of the correspondence accompanying the above letter.

His Lordship in Council also desires to be informed whether any and what subsequent proceedings have been held in the case of the female slave committed to the court at Sircy in 1836, and sentenced by it to six weeks' imprisonment. It is believed that the Foujdaree Udalut have set aside this sentence.

Fort St. George, 5 April 1841.

(No. 66.)

From *W. Douglas*, Esq. Register to the Foujdaree Udalut, to the Chief Secretary to Government.

Sir,

Para. 1. WITH reference to the extract from the Minutes of Consultation, under date the 6th instant, No. 275, I am directed by the Court of Foujdaree Udalut to state, for the information of the Right honourable the Governor in Council, that the female slave, the subject of the correspondence which accompanied my letter of the 13th of March last, was released by the principal sudder ameen of Honore, as "the Mahomedan law officers, both of the zillah court and of the Court of Foujdaree Udalut, have declared that the charge constituted no crime under the Mussulman law."

2. The female slave committed to the court at Sircy, in 1836, and sentenced by the principal sudder ameen to six weeks' imprisonment, was subsequently released by order of the Court of Foujdaree Udalut, under the circumstances explained in their proceedings of the 8th of November 1836, an extract from which is submitted for the information of the Right honourable the Governor in Council.

(signed) *W. Douglas*, Register.

Foujdaree Udalut Register's Office,
28 April 1841.

(C.) No. I.
Papers on Slavery in India.

EXTRACT from the PROCEEDINGS of the Foujdaree Udalut, under date the 8th November 1836.

READ the Sirsee Criminal Reports, prescribed by Section 35, Regulation X. of 1816, for the month of September.

Suppl. Report, case 39.

1. In this case the Court of Foujdaree Udalut have thought it proper to require the opinion of their law officers on the following question involved in it: "*A.* sold her daughter *B.* to *C.*, but *B.* refused to work for *C.*; under these circumstances, is *B.* liable to punishment under the Mahomedan law?" and the following is the reply: "According to the doctrine of Haneefa, if the people of this country should in seasons of scarcity sell their children, such sale is not valid; and as the sale is not valid, the child sold cannot be a slave; and hence a child so situated cannot be visited with stripes or imprisonment, or other correctional measures, which in case of fault the master is empowered to inflict upon his slaves."

2. The Court accordingly direct that if the prisoner Nagee be in gaol on the receipt of these proceedings, she be at once discharged; and likewise that to the mooftee of the zillah court (who gave an erroneous opinion on the point,) the accompanying copy of the above "question" and "answer" be furnished by the provincial court for his information, with copy of the case 39, as it stands in the original Criminal Report, and of the extract from these proceedings referring thereto.

(True extract.)

(signed) *W. Douglas*, Register.

(True copies.)

(signed) *H. Chamier*, Chief Secretary.

(No. 418.)

Legis. Cons. 6 Sept. 1841. No. 9.

From *H. Chamier*, Esq. Chief Secretary to the Government of Fort St. George, to *T. H. Maddock*, Esq. Secretary to the Government of India.

Sir,

Judicial Dep. From the Officiating Secretary to the Government of India, dated 27 May 1839. To ditto, 30 July 1839.

Para. 1. WITH reference to the correspondence noted in the margin, I am directed by the Right honourable the Governor in Council to request you will submit, for the consideration of the Government of India, the accompanying extract from the proceedings of the Sudder Udalut, No. 53, dated the 17th ultimo, transmitting copy of a letter from the acting judge of Malabar, on the subject of slavery as existing in that province.

2. It will be observed, that in reference to the question submitted by the officiating judge of Malabar, "Whether chermars and other slaves should be sold in satisfaction of decrees?" the Court of Sudder Udalut are of opinion that, until the Government of India are prepared to legislate on this subject, the local courts must continue to enforce claims to property in slaves; and the judges further observe, in reference to the suggestion contained in para. 5. of the communication from the zillah judge, that if a law of the nature adverted to in para. 8. of Mr. Officiating Secretary Grant's letter, dated the 27th of May 1839, could not in justice be passed without compensation to the owners of slaves, so a law of the nature suggested by the zillah judge could not be passed by the Legislature without an equivalent to the much greater practical change which such a law would effect in the value of a slave. Respecting, however, the expediency of the proposed law, the Court of Sudder Udalut entertain not the least doubt, and they have accordingly suggested a reference to the Government of India on the subject.

His Lordship in Council desires me to add (on the authority of Mr. Conolly, the collector of Malabar,) that there is reason to believe that the amount of compensation which it might be necessary to make to the owners of slaves on the enactment of the proposed law, would not be so large as might be expected at first sight.

I have, &c.

Fort St. George, 3 June 1841.

(signed) *H. Chamier*, Chief Secretary.

(No. 53.)

EXTRACT from the PROCEEDINGS of the Sudder Udalut, under date 17 May 1841.

READ letter, dated the 5th ultimo, from the acting judge in the zillah of Malabar, submitting copy of a communication addressed to him by the Pynaad district moonsiff, representing, "that in execution of a decree in appeal suit, No. 28, of 1832, passed in favour of the respondent, the said respondent has put in a petition, praying that the 'chormars' (slaves) already under attachment, may be sold to meet the balance due, after deducting the amount realized; but as he is doubtful whether 'chormars' and other slaves should be sold in satisfaction of decrees, he requests to be informed whether such a sale is objectionable or not."

Legis. Cons. 6 Sept. 1841. No. 10.

1. The acting judge requests to be informed what reply he should send to the question of the moonsiff, and, "Whether it is fit or necessary longer to continue the public legal recognition in our courts of slavery, by entertaining and adjudicating suits, and executing decrees involving their purchase and sale, and whether some gradual and incipient steps may not safely be taken, and whether some further attempt ought not to be made towards the abolishment of slavery in Malabar; at all events, that it need not be fostered or recognised as it now is, like any other legal and valid transaction in our courts."

2. Every information which it was in the power of the Court of Sudder Udalut to collect, connected with the system of slavery as prevailing in the provinces subject to this presidency, (but especially as regards the province of Malabar,) has been already laid before the Indian Law Commission, with a letter from this court, dated the 10th of September 1836.

See also letter to the Chief Secretary to Government, dated 17 July 1839.

3. With respect to the question,* whether the courts would admit and enforce any claim to property, possession, or service of a slave, and if so, on what specific law or principle the courts would ground their proceedings, (which was one of the points on which information was sought by the Indian Law Commission, in their letter to this court, dated the 10th October 1835,) the Court of Sudder Udalut, in their letter quoted above, referred to the following opinion on this point, expressed by Mr. Strange, the then assistant judge of Malabar. "In the civil courts, the law recognised in Malabar is that of the country, called 'kana' (mortgage), 'jemna' (proprietary right), 'charrada' (custom or rules), before adverted to, which, although founded upon the Hindoo law, is appealed to both by Hindoos and Mahomedans, and regulates all questions of property, whether real, personal, or in slaves. It is not possible that the cases supposed, wherein the Mahomedan and Hindoo law may be brought into collision, should arise in Malabar. Hindoos in this district possess no other description of slaves but such as have been born from parents who are slaves by caste, and these the Mahomedan law would recognise to be in a state of slavery; and the three conditions under which persons become slaves among Mahomedans, that of descent, of captives in war, of unbelievers, and of voluntary sale in times of famine, are common to the Hindoo caste.

"The courts in Malabar, beyond a doubt, will be bound to admit or enforce claims to property in slaves (being such by the law of the country, and not imported from foreign parts,) on behalf of others than Mussulman or Hindoo claimants, and against others than Mussulman or Hindoo defendants, upon the grounds that such property has been acquired, not only with the tacit consent, but through the direct means and assistance of the British Government in India, in proof whereof he submits copies of official correspondence from the Bombay government and the Commissioners of Malabar, received from Mr. Francis Carnac Brown, of Tillicherry and Aujarakandy, who has succeeded to property in slaves purchased by his father from the government."

4. The

* Question proposed by the Indian Law Commission:—"Slavery not being sanctioned by any system of law which is recognised and administered by the British Government, except the Mahomedan and Hindoo laws, they are desirous of being informed whether the courts would admit and enforce any claim to property, possession, or service of a slave, except on behalf of a Mussulman or Hindoo claimant, and against any other than a Mussulman or Hindoo defendant, and if so, on what specific law or principle the courts would ground these proceedings."

4. The Court of Sudder Udalut are of opinion, "that until the Supreme Government are prepared to legislate on the subject of slavery, the local courts must continue to enforce claims to property in slaves, and this opinion will be communicated to the acting judge in the zillah of Malabar, for his information and guidance."

5. Mr. Thomas, however, suggests the enactment of a rule, to the effect that from and after one year from the date of its promulgation, the sale and purchase of a slave be not publicly and legally recognised in the Adawlut Courts of Malabar, and he suggests also that all children under 10 years of age, born of slave parents, be immediately emancipated, and that all children hereafter born be declared free.

6. It occurs, however, to the Court of Sudder Udalut to observe, that if a law of the nature referred to in para. 8 of the letter from the Government of India, which accompanied the Minutes of Consultation, under date the 2d July 1839, could not in justice be passed without compensation to the owners of slaves, so a law of the nature suggested by Mr. Thomas could not be passed by the legislature without an equivalent to the much greater practical change which such a law would effect in the value of a slave; and it is for the Government of India to determine whether the finances of the state will at present be able to meet any such expenditure.

7. Respecting, however, the expediency of the proposed law, the Court of Sudder Udalut entertain not the smallest doubt, and they would suggest, therefore, a reference to the Government of India on the subject.

Ordered, that extract from these proceedings, together with a copy of Mr. h omas's letter of the 5th of April last, be forwarded to the chief secretary to Government, for the purpose of being laid before the Right honourable the Governor in Council for his consideration.

(True extract.)

(signed) *W. Douglas,*
Register.

Zillah Malabar.

From *E. B. Thomas*, Esq. Acting Judge, Calicut, to the Register to the Court of Sudder and Foujdaree Udalut, Fort St. George.

Sir,

1. With reference to the enclosed communication from a moonsiff under this court, I have the honour to request the opinion of the Judges of the Sudder Udalut (under a reference to Government, if they deem necessary,) as to what reply I should send to the question of the moonsiff, and whether it is fit or necessary longer to continue the public legal recognition in our courts of slavery, by entertaining and adjudicating suits, and executing decrees involving their purchase and sale. It would appear worth considering whether some gradual and incipient steps may not safely be taken, and whether some further attempt ought not to be made towards the abolishment of slavery in Malabar; at all events, that it need not be fostered or recognised as it now is, like any other legal and valid transaction in our courts. The present reference from the moonsiff of Pynaad (an intelligent East Indian), is only one among numerous instances in which the sale and purchase of slaves (just like cattle, or other movables on an estate) comes before the courts for recognition and adjudication. I would propose no sudden or violent infraction of vested rights, or even long-tolerated abuses; but simply that the sale and purchase of slaves need not be publicly and legally recognised, as now, in our courts in Malabar. In some instances suits are instituted in which the slave is the sole object under litigation; in others he is mixed up with other property; and in public sales for the execution of decrees, slaves are constantly put up to public auction, under the orders of the courts. The practice of selling slaves for arrears of revenue, once common, was put a stop to 20 years ago, by orders from the Board of Revenue, I believe.

See also Court of Foujdaree Udalut, 132, 10 Feb. 1841.

One year's notice might be given to the people through the courts.

It would be practicable, where other property besides the slaves is involved in the litigation, to adjudge the rest. Omitting the slaves, the measure would in fact be simply a negative check, rather than any positive opposition to the practice of slavery, but would operate beneficially, though tacitly, in favour of the slave, inasmuch

inasmuch as the master would then feel that his hold on his slaves was not valid or legally recognised, but depended on his own mild and liberal treatment of them, when they felt at liberty to leave a harsh or cruel master, and some such doubtless there are. Though it may be plausibly, and perhaps with truth, urged, that the general features of the slavery of Malabar are of a mild nature, the effect is nevertheless debasing and degrading, as it ever is and must be under any shape or form whatever; this the wretched state of most of the slaves in Malabar attest; they are for the most part utterly degraded in intellect and in independence of mind, too often made apt and unresisting tools for bad purposes in the hands of their owners, and unfitted for good ones.

3. If it be necessary to show from facts, as well as from reason, that they are not indispensable to the agriculture or customs of Malabar, it may be mentioned that in some parts of North Malabar there are few if any slaves used; and again, that the subjection is not a voluntary one, is shown from the fact of many occasionally making their escape to Coorg and other parts of the country, where they become ordinary day labourers, but of course dare not return again to their own neighbourhood. It may also be mentioned that, if I am rightly informed, about 2,000 slaves, who became the property of Government from escheated and purchased estates, have been formally emancipated; these lands have not suffered; they are as fully cultivated as before, with few exceptions; the people have remained on the estates, now working as free men where they formerly laboured as slaves; there is indeed little fear of their leaving their homes, unless driven from them by ill-usage or other strong motive. I am unable to learn from any inquiry I have been able to make among intelligent natives of the province, any instance of a "cherman" being able to write or read his own name, an additional proof of their mental degradation.

4. It is also a lamentable, but undoubted truth, that their life is held at a low estimate by many of their masters, and the records of this court would show frequent instances where the slave is either made the ready instrument or the object of violence; on the one hand, he is thrust forward as the convenient scapegoat, given up to screen the higher and perhaps more guilty instigators of a murder; while, on the other, the opinion seems really to obtain, that far less guilt and odium attaches to the murder of a slave, and that his life is comparatively less to be valued than others. Criminal.

5. I would apologise for the length of these observations, but the subject, not entirely new to me, has been so frequently and powerfully forced upon my notice in both the civil and criminal business of this court, that I deemed it my duty to submit, for the consideration of the judges of the Sudder Udalut, and of Government, a measure which appears to me called for, and a preliminary and safe step amongst others towards a gradual and eventual emancipation of slavery in Malabar. Such final measures are of course for the consideration and wisdom of Government; I would however venture, with deference, to suggest that if any insurmountable obstacles should be found towards an immediate amelioration of the lot of the present race of slaves (cheemars and others), no rational or well-founded objection could appear to exist to a declaration by Government, "that slavery should no longer be perpetuated by birth, but that the children hereafter born from a certain date, and retrospectively within ten years from that date, should at least be free. This would include a large number of young, rising, free labourers, whose services would be ample and ready for every demand of agriculture, and to whose emancipation (as not yet from their age fit for work, or saleable) no just objection could be raised. That free is really cheaper than slave labour in its result, is a truth which (though demonstrable) would not perhaps be obvious to the slave-holders of Malabar; though, in fact, the allowance of paddy, a cloth, and a hut, usually given to the slave, will very nearly now hire a free labourer. The average ordinary cost and value of slaves in Malabar appears to be about 20 rupees for a male and 15 for a female; in some places the females are highest in price, on account of their children. As a proof of how frequently the subject is brought to the notice of this court, I subjoin a memorandum of miscellaneous petitions only lately presented among others; and should the judges of the Sudder Udalut desire it, I shall submit a statement showing the proportion of suits and transactions under the courts, involving the sale of slaves in the last year. Of course until other orders are received from the Sudder It varies in different places.

(C.) No. I.
Papers on Slavery in India.

Udalut, or from Government, the procedure hitherto usual in all such cases will be maintained and recognised by me in this court.

(signed) *E. B. Thomas,*
Acting Judge.

Calicut, 5 April 1841.

(True copy.)

(signed) *W. Douglas,*
Register.

(True copies.)

(signed) *H. Chamier,*
Chief Secretary.

Legis. Cons. 6 Sept. 1841. No. 11. Slavery in India.

MINUTE by the Honourable *W. W. Bird*, Esq. dated the 18th June 1841.

IT would appear from the Report of the Law Commission, that slavery in almost every form, except the oppressive and compulsory kind practised in the West Indies, exists in India; but it is obvious that for the most part it is voluntary, connected in many places with distinctions of caste, and upheld by mutual convenience, or, which is nearly the same thing, by the wants arising out of the different relations of the parties concerned.

I cannot say that I approve of the plans recommended for adoption by either of the two parties into which the Law Commissioners are divided on the subject. The course recommended by the minority is to undermine slavery without abolishing it; to recognise the right of the master in his slave, and at the same time to deny him the power of enforcing it; to acknowledge the legal existence of slavery, and to refuse it judicial protection; to countenance for the present its continuance, in order to bring about imperceptibly its ultimate extinction, and thus gradually to render rights of little or no value, which otherwise might not be relinquished without contention. The majority, on the other hand, object to add new provisions to the law, which, while acknowledging the right of the master in the slave, leave him no means of enforcing the labour to which under that acknowledgment he is entitled. They concur, however, with their colleagues in opinion that it would be more beneficial for the slaves themselves, as well as a wiser and safer course, to direct immediate attention to the removal of the abuses of slavery, rather than recommend its sudden and abrupt abolition; and they agree not only in many of the propositions advanced for that purpose, but suggest additional ones of their own for the better treatment of slaves, and for enabling them to effect their emancipation.

The first of these two plans involves an inconsistency, which appears to me to preclude its adoption as a legislative measure. It grants a licence for dereliction of duty towards the master, without liberating the slave; it injures the one by encouraging idleness and immorality in the other, and is consequently hurtful to both. The second plan is free from this inconsistency, but it is equally open to the objection of being calculated to impede rather than advance the object in view, by numberless minute and detailed provisions, which would strengthen the obligations arising out of slavery and prolong the existence of that which in any shape is an evil, and which, if left to itself, would probably die in course of time a natural death.

It cannot, after the Report of the Law Commissioners, be denied, I should think, that slavery in India is little more than a name. When a labourer knows that if he idles his master will not dare to strike him, that if he absconds his master will not dare to confine him, and that his master can enforce a claim to service only by taking more trouble, losing more time, and spending more money than the service is worth, such labourer is in reality no longer a slave. The condition of slavery can be but little an object of aversion when, on the experiment of emancipation being tried, as it was in Coorg, the majority of the slaves re-entered the service of their former masters, or attached themselves to others as domestic servants; nor can slavery be more than nominal when the only motive which induces a slave to do the will of his master is fear of losing the advantages of his situation; when a master is aware that he has no more power over his slave than a father over his children; and when the public authorities, generally

generally speaking, refuse to enforce the claims of the master either to the person or services of a slave in any part of British India.

Were we, therefore, only to take into consideration the character of slavery in this country, and its connexion, especially as regards agrestic servitude, with the distinction of caste, which nothing but the progress of civilization can obliterate, the best plan I should say would be to abstain altogether from interference, and leave it to time and the operation of the general principles of our administration to work out its practical abolition. But the evils of which slavery is the cause are so serious, and so prejudicial to the general welfare of the community at large, that we should neglect, I think, no means that holds out any hope of assisting to put a stop to it. It is one of the principal incentives to kidnapping, child-stealing, the sale and purchase of children, male or female, the murder of parents for the sake of their children, and leads to prostitution in the vilest forms, and all the revolting practices connected therewith. Were the entire extinction of slavery as a state in any way recognised by our laws to be authoritatively declared, much would be done towards diminishing the perpetration of these enormities; such a declaration might, I think, be made without the slightest difficulty, and it would put an end to the inconveniences and embarrassments which are everywhere felt, from there being no uniform rule on the subject, and from the law being one thing, and the practice of our civil and criminal courts another, in almost every district.

After the measures which have been adopted from time to time, both at Bengal and Bombay, for the suppression of slavery, the step I propose to take would create no discontent at either of those presidencies, where the feelings of Government and of the local authorities are well understood on the subject. Under the presidency of Madras, where slavery, especially in Malabar and Canara, is for the most part agrestic, no laws have yet been passed to discourage it, and the objectionable practice of selling slaves by public authority in execution of decrees of court still prevails; but there is every reason to suppose that emancipation would be received in those provinces as it was in Coorg, and viewed as a matter of indifference. It is a remarkable fact, that in no part of India have attempts to restrain slavery produced any unsatisfactory results. Of these attempts the most worthy of note are the proclamation of Sir C. Metcalfe at Delhi in 1812, and the rules passed by the Bombay government in 1820, neither of which excited the smallest opposition, although the one was issued in the ancient Mahomedan metropolis of India, where domestic slavery had predominated from the earliest period, and the other became law in a tract of country where slavery had taken as deep a root as in any other part of British India.

It is proposed, however, to postpone this grand measure until some future period, when it can be carried into effect with greater safety; but when that period is to arrive has not been stated. This is exactly the course which was pursued with regard to the practice of suttee; certain detailed rules and regulations were passed with a view to restrict within the narrowest possible bounds the performance of that rite, but which were found on trial to be attended with the exact contrary effect; and we were obliged to do at last what might have been done 20 years sooner with equal facility. In like manner the restrictions now recommended to be imposed on slavery by the Law Commission would legalise and confirm it to the extent allowed, and render its ultimate extinction not only remote, but a matter of much greater difficulty than at present.

The measure which I propose possesses the fourfold advantage of being one for which the greater part of India is fully prepared; of inflicting upon the holders of this description of property no injury of which they could reasonably complain; of reconciling the law with the practice of the local authorities, and of withdrawing from slavery throughout India the sanction and support of the British Government. No rights claimed as arising out of an alleged state of slavery could then be enforced by a magistrate, nor could human beings be any longer sold* by our civil courts in execution of decrees, like cattle or any other property. It would be an obvious inconsistency to forbid the one, while in any part of British India we openly allow the other. It appears to me that we cannot consistently pass a law

* *Vide* Letter from the Governor of Fort St. George, dated 3d instant, with enclosures; also, p. 240 of the Report of the Law Commission.

(C.) No. I.
Papers on Slavery in India.

law, declaring "that any act which would be an offence if done to a free man, shall be equally an offence if done to a slave," while we allow the sale of slaves by public authority. If anything be done at all, nothing will answer the purpose short of a declaration that the law no longer recognises any distinction between a free person and a slave, and that the courts, civil and criminal, are no longer competent to enforce any claim on the grounds of slavery. By such a declaration we should do avowedly what the Law Commission recommends should be done imperceptibly. We should release ourselves at once from the equivocal position in which we are placed by the law being one thing and the practice, generally speaking, another; and it would be clearly understood by all, as with the views we entertain it ought, that our design is no longer to recognise slavery in any form, or to countenance in any way the evils with which it is attended.

As to compensation, my sentiments may be expressed nearly in the words used by the Governor-general, which are as applicable to my proposition as to his Lordship. "Compensation for such a formal withdrawal of authority seems to me out of the question, both because compensation could not be given on a ground so little capable of exact estimation, and because the authority has actually ceased to exist in by far the greater number of our districts." I would not grant compensation, because the state of slavery in India is one not to be presumed against any person summarily, and because the probability is, that even with the aid of the Hindoo and Mahomedan law, but few claims arising out of that state, if brought for regular inquiry before a court, could be established.

In regard to the sale of children in seasons of distress, such as follow on occasions of inundation and famine, I see no necessity for any legislation on the subject. Such sales could not now, under any law in force, consign children to slavery, much less should the enactment which I have recommended become a part of the general code. Parents can convey no rights over their children to others, but such as they legally possess themselves; and a transfer of those rights, when the means of subsistence is no longer procurable, must be an advantage to both parties.

Further, I have only to add, that the recommendation of the Law Commissioners for the better enforcement of the objects of the statute 5 Geo. 4, c. 113, meets with my entire concurrence.

(signed) *W. W. Bird.*

Legis. Cons. 6 Sept. 1841. No. 12. Slavery in India.

MINUTE by the Hon. *H. T. Prinsep*, Esq. dated the 31st July 1841.

THIS extensive subject, embracing as well the different descriptions of slaves, the mode of their falling into slavery, and their treatment and habits, as the state of the law in regard to slaves in all parts of India, and the dispositions and bias with which it has been administered by British functionaries, has been so ably and fully investigated, and the results of the investigation have been so well brought together by the Law Commission, that I should have much preferred leaving their Report to speak for itself, and passing it for the purpose through the Council without observation or comment, if we had not been called upon by the Honourable Court of Directors specifically to state our own views and impressions as to the mode of dealing with the question hereafter, in order to assist the home authorities in their disposal of it.

2. No one can have passed through a career of 30 years' service in India without having at different times much considered this subject, so as to have opinions more or less matured upon it; I did not, consequently, take up the volumes which contain the Report of the Law Commission with a judgment quite unbiased. I have, however, perused them with much interest and pleasure, and have derived from the perusal a great deal of instruction on many points both of fact and principle. The Report is necessarily long, because it embraces the condition of slavery, and of the law and practice in regard to slaves in every province of this large continent, and includes the bordering countries, and indeed all the wide territories from the eastern coast of Africa to the Malayan Archipelago; it is therefore only the more complete on this account, the length being

being a consequence of the abundance of matter, and not of the method of treating it.

3. We have the satisfaction to believe, that the subject has been quite exhausted by the exposition of facts, and by the disquisitions this Report contains, so that henceforward it will be the text-book upon the data of which all future arguments and propositions will be founded. The Law Commission have well fulfilled their task by producing a work which thus brings within reasonable compass all the details of this wide subject; but our present business is not with these details; we have to consider and state our opinion on the specific recommendations submitted at the close of the Report, and to these therefore I shall confine my remarks. They are to be found at pages 366, 367, and 368; and though there is a slight difference of opinion amongst the members of the Commission, principally on the degree of authority that should be recognised in the master, under the supposition that existing slavery is to be tolerated for a time, and not abruptly abrogated, the difference is not sufficient to prevent the recommendations from being regarded as the united and matured opinion of the chosen men whose attention has so long been given to the investigation of this subject in all its bearings.

4. The Commission seem to think a law to be necessary to regulate contracts of bondage, and to prevent bondsmen and apprentices from being hereafter treated or considered as slaves. They further propose to recognise by law such slaves as are so by the Hindoo or Mussulman law, but to provide against any sale or transfer of such slaves, and to prohibit magistrates from enforcing the master's right over the slave person, to take away all distinctions as to offences against the person by reason of slavery, giving the slaves the same remedies as free men, even against their masters, and the right also of emancipation in case of cruel usage, prostitution, or misconduct of any kind in the master. They would likewise prohibit by law any transfer of apprentices' or bondsmen's contracts without their consent.

5. Some other provisions of less importance are recommended, and some of obvious expediency, which would of course be introduced into any law that might be framed. But I consider the matter for our present determination to have no concern with the particular provisions of law; we have first to dispose of the preliminary question, whether the case is one for legislation or for executive management? whether it is necessary and expedient to legislate at all upon the subject? whether, in short, a draft of law shall be laid before the Council to make provision for any matter whatever connected with slavery in India, or it shall be left to be dealt with, as heretofore, by the tribunals and executive authorities? If the question of legislating for slavery be decided in the affirmative, the details will follow to be settled according to the extent that it may be determined to proceed with our legislation.

6. It seems to be fully admitted by the Law Commission, that the status of slavery in India is not an evil to be compared in any way with negro slavery as it existed in the West Indies. The slave is not reduced to the condition of a mere working animal, to be compelled by dread of the lash to render a sufficiency of labour to compensate for the cost of his keep, and repay the outlay of his purchase. Such calculating cold-blooded relations of man to his fellow-creatures as follow from the habitual use of purchased slaves for every work of labour undertaken for profit, are entirely unknown in India. But they are not unknown in adjoining parts of Asia; for amongst the Oozbeek Toorkamans the evil exists, and produces the same violence and wretchedness that moved the compassion of Europe in the case of the negro slavery of the West Indies. There are these slave markets in every town supplied by the wholesale band of prisoners captured in war or in man-stealing expeditions, undertaken with no other aim. The influence and authority of the British Government is now at work to mitigate and correct this evil, where it thus exists; and already much has been done to narrow the field of its operation. But this state of things has never had existence in any part of this country since the connexion of the East India Company with its administration. In no town of India is there anything like a slave market recognised by the functionaries in authority; and if there are districts in which the agricultural labour is in part committed to slaves and bondsmen, these are not foreigners imported and purchased for the purpose, but races of men, *adscripti glebæ*, born and educated to the work of tilling the land

for hereditary or caste-superiors, like the serfs of the middle ages, and the classe still found on the great estates of Russia.

7. With the very partial exception of this class of agrestic slaves, the Report of the Law Commission confirms the assertion often made in respect to the slavery of India, but first, I believe, placed on the record of this Council by the late Mr. H. Colebrooke, that it exists in the mildest of all possible forms, that of domestic servitude only. It is a mode of providing faithful and attached servants for domestic duties, in which the tie is reciprocal, and the treatment of the slave for the most part kinder and more considerate than would be that of a free man hired for the special duty, and having no claim but for his wages.

8. Now, putting for the present totally out of the question all consideration whether law gives undue power over the persons and property of domestic slaves, and is therefore susceptible of abuse, I think we may fairly ask whether any actual abuses have been discovered? What evils, and to what extent, have been made apparent? If we find that these are rare and far between, and that the domestic slaves as a body are contented and happy, even more so than the hired servants, the case is clearly not the same as that which has moved the sympathies of the humane of Europe; and we must not allow the feelings of compassion and pity excited by the long array of suffering and wretchedness brought to bear against the system of African slavery to mislead us to the belief that we are dealing with the same question when considering the state of slavery here in India. It is our duty to consider what we see and find of slavery entirely by itself, to deal with it as if such a thing as African slavery had never existed elsewhere, to provide remedies for the evils we discover and have experience of, and to do so with as little violence to feeling, and as much consideration for supposed or real rights as may be consistent with the attainment of the end in view.

9. And it has long been clear to me, that if negro slavery had never existed as a topic to be preached and declaimed upon in England and Europe, and if, in consequence, there had been no exaggerated feeling in respect to slavery in the abstract, because of the horrors and miseries which were found to attend this particular form of it, the condition of the slaves, and the customs and practices in respect to slavery which prevail here in India, would never have been regarded in the light of evils worthy of a special direction of the Parliament for their full investigation and correction. The investigation is now complete, and has been pushed with a searching spirit into every corner where there was a trace of slavery in an obnoxious form; but we look in vain for the grounds upon which the interference of this high authority can be justified—the "dignus vindice modus." It is in another quarter of the globe, at the very antipodes of India, that the case which has drawn the attention of Parliament to slavery is to be found. Here we are innocent of anything to call for such interposition. The state of things laid bare by the Report before us seems to be one especially to be dealt with by local authority. It is true that India is not quite sound; she has a little of the fever of slavery still on her, but it is the remains only of a status from which she is in course of rapid recovery, and she requires to be treated as the convalescent is treated whose disease is fast leaving him; she needs not to call in a strange physician to apply violent remedies, in order to conquer symptoms threatening to produce worse evils if left to themselves.

10. The Law Commission seem to be decidedly and unanimously of opinion that the evil of slavery in India is fast curing itself; that as the British authorities, wherever established, administer the law with a bias, of course, against slavery, and lend their influence indirectly also towards abolition, this circumstance alone must, sooner or later, do away not only with the evils and abuses, but even with the condition of slavery. They recommend that legislation shall be confined to such measures as will promote and expedite this result, and all the propositions they have submitted are framed in that spirit. In considering, therefore, the preliminary question, whether it is expedient to legislate at all, we may dismiss altogether the broad ground upon which some of the ultra abolitionists at home will probably attempt to inflame men's minds; viz. that slavery is a status that ought not to be allowed to subsist a moment in any British possession. For the good of the domestic slaves, and of other willing continuers in slavery, notwithstanding the facilities offered by the law to get rid of the condition, and with a knowledge of the bias of all administrators of the law in favour of the assertion of freedom, we are told by the Law Commission that we must proceed

proceed with caution, letting the slavery that exists continue until it expires naturally under a system of discouragement, and so allowing the condition of society to take the change desired without any arbitrary interference.

11. I subscribe implicitly to this view of the proper course to be pursued, and shall consider, therefore, the propositions submitted as they bear upon it; in other words, as they appear calculated to assist or impede the final emancipation of existing slaves, and the declaration and enforcement of the principle of universal freedom.

12. The first recommendation is, that the Government shall regulate by specific law the terms upon which an individual shall be permitted to assign himself or his children and others dependent on him. The aim of this recommendation is to prevent the sale of children into slavery, which is a common practice in times of scarcity, when the parents feel that unless so provided for, the whole family must starve. Some doubt has been thrown upon the questions of law arising out of this practice. The Hindoo law, I believe, recognises children so disposed of as slaves; the Mahomedan law, in some parts of India, does so also, on the ground of custom; in others it does not, on the ground that captivity in battle with infidels is the only recognised form for the conversion of a man born free into a slave.

See Madras Futwa, referred to by the Governor-general.

13. The recommendation of the Law Commission would place all bargains of this kind for children on the footing of apprenticeships for their good, and would allow full-grown persons also to hire themselves as bondsmen for any term of years or for life. There is no denying the equity and fairness to all persons of the principles on which this part of the Commissioners' recommendations is framed, and I have little doubt that the courts of law, admitting their soundness, would themselves enforce them, whenever a case to which they were applicable might come before them; but I doubt the necessity or expediency of declaring them by a specific law.

14. The proposition is entirely prospective, and would leave the slaves or servants who were already taken into families on the terms of purchase from parents excluded, and therefore, by inference, to be treated still as slaves. I think, if the question be left as it is, that the courts and judicial authorities in most parts of India apply these specific principles to the cases of existing infant-bought slaves, and on that account I should deem it very objectionable to draw a line which would have the effect of excluding them.

15. If, as now appears (and it is a point I shall presently come to), there is no criminal court which would assist a master in the assertion of a master's authority over a recusant slave, and if the process of civil suit, being the only remedy open, the decree in his favour is even then matter of doubt, we may take it for granted that no person, especially no one having the plea of free birth, need continue in the condition of a slave; and that, if he does so, the act is voluntary, and such as requires no interference of the Legislature to prevent. This very status of the law and of its administration by British functionaries is, I conceive, a better security for both present and future infancy-bought domestic slaves than any that would be provided by the proposed attempt to regulate by special Act the civil effect of contracts hereafter to be made; and it seems to me to be the law actually applied to such slaves, in by far the greater part of India, where only such domestic slavery exists.

16. The next class of recommendations relates to existing and future slaves; these propositions draw very tightly the line of what shall be considered such, while they open wide the facilities for obtaining exemption, and include rules prohibiting transfers by sale, and giving a title to release for ill-usage, prostitution, or misconduct in the master.

17. The peculiar feature, however, of the propositions of the minority of the Law Commission is, that they not only prohibit magistrates from assisting in the coercion of slaves, but two of the members propose to give the slave, further, the same remedy for assault, &c. against his master as free men have against each other, which, as observed by the majority in their after comments, is tantamount to an encouragement of the slave to defy his master openly, and refuse to labour; in other words, to set him free.

18. All the other propositions are, more or less, the same as have been acted upon by the public functionaries; but some of these functionaries have raised doubts, and their practice has not been uniform.

19. It is in order to make it so that the Commissioners recommend the propositions to be framed into a law; and I perceive that the Governor-general inclines to adopt that one of the propositions which would prohibit the magistrate from giving his interference to support the master in the coercion of his slave; but his Lordship would stop short with this, and leave the rest to the discretion of the courts and public functionaries.

20. If I thought that our courts and public officers would, in consequence of the investigation that has taken place, feel less inclined than they have been hitherto to follow out and act upon these principles, I should deem it necessary to enforce them by an Act or Government Order; but I think they show the disposition every day more and more strongly to apply the principles of freedom to the cases that come before them, and that to prescribe a fixed line for their conduct in this respect would fetter rather than enlarge their discretion. I confess, too, I participate in the feeling that if the master is made liable to an action for assault and false imprisonment, besides being deprived by law of any means of coercing a slave and compelling him to work, except by a civil action, and if this be inserted in a public enactment, the provision will be regarded and cited as an Act of perpetual and immediate emancipation, and that we should, by passing such a law, bring forthwith upon the Government claims from many slaveholders in different parts of the country for compensation equal to the value of the slaves' labour they will allege that they lose in consequence.

21. If the principle of refusing the magistrate's assistance be not enough, and that of allowing the slave a remedy against his master for a common assault, require also to be generally acted upon (and I believe it is so now in some parts of India), I had much rather the principle should be declared locally by the superior courts, as an incident of the existing state of society and of the laws actually in force, and so should be extended gradually from province to province, as cases occur to give the occasion, than that so strong a position should be put forth in a special enactment of this Government as one of general and immediate application to all parts of India.

22. For the same reason, therefore, that I would refrain from passing laws to confirm assignments of children to apprenticeship, I think it would be inexpedient and unnecessary to make provision by law to regulate who shall continue to be slaves, and what shall be their condition, rights, and responsibilities, and what the master's power over them; these points seem to me to be all in a train of sufficiently speedy settlement in the way we desire, by the quiet action of the courts, and forms of administration which exist, operating on the condition of things prevailing within their respective jurisdictions.

23. Slavery of the same kind that we find in India existed in Europe less than 300 years ago, and we have seen it gradually and quietly disappear under the influence of an adverse administration of justice and a feeling of society inclining to free opinions.

24. The same influences are rapidly at work in all parts of India, and we may safely leave to them the completion of the end already more than half attained. Assuredly the Government would never have thought of resorting to any other means than this gradual process of abolition, if those who have gained reputation by working out the abolition of negro slavery in the West Indies against an interested and strong opposition, had not fancied they had still work in hand in India, because slavery was not yet actually and entirely extinct there; but if this be an exaggerated feeling, which I doubt not the Law Commissioners' Report will prove it to be, so far as concerns this country, the Government, and those who control the Government, will be slow to yield to it, or to allow themselves to be turned from the course of their conviction by any outcry having such an origin.

25. I declare myself satisfied with the pace at which slavery is making its disappearance under the influence of an adverse feeling in the community and in the courts of justice; and I think that the appliances recommended by the Law Commission, instead of expediting, would retard the end. I observe that amongst them is no proposition to alter the law of property and of inheritance, which, under the admission of slavery as a legal status, is particularly severe; for all that belongs to the slave is the property of the master, and though married and with children, the acknowledged slave is capable of giving nothing to either. The reason, as I understand, why it has not been proposed by the Law Commission to touch this part of the question is, that they find the slave's right of acquiring

acquiring property to be in most parts of India tacitly recognised, notwithstanding that the letter of the law is adverse; and even where not recognised, still, under the supposition of the slave being in circumstances to create property, the difficulty the master would find of establishing against him the plea of slavery is, in the opinion of the Commission, sufficient to secure the alleged slave and his natural heirs against the master's claim; but if this part of the question be thus left to the natural bias of the courts towards freedom, why also should not those other branches for which the Law Commission have proposed specific rules?

26. In the recommendations of the majority this inconsistency is particularly apparent, for they propose to enact that the slave may purchase his own freedom, leaving the law as to his possessing any property to take its chance in the courts; surely this latter is a necessary preliminary to a self-purchase, and if one may be left to the known bias of judges, so also may the other.

27. I recollect more than one case in which the question of inheritance from a quondam slave was particularly involved; and others of the same kind may occur; so that, if any branch of the subject required legislative interposition, I should rather have felt inclined to begin with this. But my opinion is against bringing before the Council any law upon the subject, and I am well content, therefore, that inheritance from slaves and the administration to their estates shall be left to the conscience and discretion of our civil judges, like other questions in regard to their treatment or condition. The particular cases I have referred to are, first, that of Darab Ulee, the well known chief eunuch of the Fyzabad Begum: he had a large allowance secured to him upon the Fyzabad Government's six per cent. loan, and at his death he left a brother unconverted to the Mussulman religion, and I believe there were also several bequests by will. The King of Oude, however, claimed as heir of Darab Ulee, because he had been a slave to his grandfather, Shoojoodowlah; and this claim was allowed by the British Government (wrongly, I think, to the prejudice of all others), notwithstanding that Darab Ulee was of known Hindoo extraction, a native of India, and therefore a slave only by early assignment or sale by his parents.

28. Another nearly similar case occurred more recently at Moorshedabad, in which an eunuch of that family died possessed of property both personal and real, and I believe to this day the claims to it have not been definitively settled. But these are cases of too rare occurrence to need any special enactment, and I think it would be highly objectionable to recognise by positive law the peculiar condition in which such people stand towards the families in which they are still retained.

29. The above observations apply principally to the domestic slavery of India, which, except within very narrow limits, is the only species with which we have to deal.

30. The state of things in Malabar is different; there, it appears, the cultivating classes are mostly, if not entirely, slaves; indigenous, indeed, not imported, and therefore of the serf kind, and widely different from the negro slaves of the West Indies, but still existing in a state of degradation that it would be extremely desirable to abolish.

31. If the whole of India were now in the same condition as Malabar, I think I should have admitted the necessity of undermining the institutions of slavery which we find there by positive laws of the kind proposed by the Law Commission; but the district is isolated, and the assimilation of its condition to the rest of India must, I think, result gradually but surely from the many circumstances which are now in operation to break up its exclusive system; for, first, there is the continual resort of strangers for trade and settlement, which must of itself tend to produce comparison and change; then there is the single Government encouraging this change, and promoting free intercourse and the spread of free opinions; besides which, the administration of the province is conducted by functionaries trained to the condition of things that prevails generally, and not therefore favourable to its exclusive and peculiar institutions.

32. Relying, therefore, on the silent effect of all these influences, I incline to leaving the slavery of Malabar to its own process of decomposition rather than fixing by special law the line within which it shall be recognised as legal, a measure which I look upon as calculated to confirm and keep longer alive the so much as may be so recognised. *Sic orig.*

33. Of course I assume that the importation and sale of foreign slaves is everywhere prohibited, and criminally illegal under the existing laws; if this point be not

(C.) No. I.
Papers on Slavery in India.

not sufficiently provided for, I am prepared to concur in any proposition calculated to make the prohibition more stringent. As for prohibiting the exportation of slaves, I incline to think this unnecessary, or, at any rate, that the provision would be nugatory. It is unnecessary, because, if our law gives the master no power over the person of an alleged slave, the latter has only to refuse to go beyond the frontier and he will be supported by the authorities in this resistance; and nugatory, because the fact of export carries both master and slave beyond the jurisdiction of the law, so as to enable the former to defy the penalty.

34. It will be seen, from what I have thus written, that I go even further than the Governor-general, in desiring to avoid legislating upon the subject of slavery in India; I think it better to let no laws stand on our statute book except such as are directed against the importation of slaves for sale: all else I would leave to our courts and authorities, in full confidence that they have the desire and the disposition and the means to bring about an entire abolition as fast as circumstances will allow. Of course it will be the duty of the Government executively to assist and encourage the public functionaries in this work; and there is one thing which I think the Government may do with great advantage, and ought to do immediately, and that is, to prohibit executing the sale of slaves by any public officer on any plea or under any process whatsoever. The necessity for this prohibition has been made apparent by a recent reference from Fort St. George, which shows that it is the practice at Malabar to take out execution for debt against slaves as against other property of a debtor, a thing unheard of in any other part of India, and quite inconsistent with the principles of our general administration.

35. This is the upshot of my opinion in regard to slavery in this country; I have not gone so fully into the subject as, perhaps, considering its importance, I ought, but have still, though desiring to state only the general result of my impressions, written more than I intended or thought to have done when I commenced.

36. All seemingly unite in the opinion that the work of abolition is in progress, and in the apprehension also that too much interference would probably defeat or retard the end. It is a mere question whether to apply any stimulus at all by legislation, at the risk of retarding or limiting the efforts now making towards the recognition of universal freedom. My judgment is against touching the subject legislatively; but the authorities in England may judge differently, and as they have mooted this question, we may leave to them to determine the course to be followed consequently upon the full investigation that has now been made.

(signed) *H. T. Prinsep.*

(No. 1229.)

Legis. Cons. 6 Sept. 1841. No. 13.

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *T. H. Maddock*, Esq. Secretary to the Government of India, Judicial Department.

Sir,

Judicial Dep.

I AM directed by the Right hon. the Governor of Bengal to request that you will submit for the consideration and orders of the Supreme Government, the accompanying correspondence * relative to the mode of giving effect to decrees of court as respects property in slaves.

2. You are requested to return the documents now forwarded.

I have &c.

Fort William,
3 August 1841.

(signed) *F. J. Halliday,*
Secretary to the Government of Bengal.

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* Letter to Register Sudder Dewany Adawlut, dated 30 March 1841.
Letter from Register Sudder Dewany Adawlut, dated 28 May 1841, No. 1961.
Letter to Register Sudder Dewany Adawlut, dated 23 July 1841, No. 2718.

(No. 462.)

From *F. J. Halliday*, Esq. Secretary to Government of Bengal, to *J. Hawkins*, Esq. Register of the Sudder Dewany Adawlut.

Sir,

I AM directed by the Right hon. the Governor of Bengal to request that the court will ascertain and report, for his Lordship's information, the manner in which it has been usual to enforce decrees adjudging persons to be slaves, in the cases in which the slaves may refuse to serve.

I am &c.

Fort William,
30 March 1841.

(signed) *F. J. Halliday*,
Secretary to Government of Bengal.

(No. 1961.)

Sudder Dewanny Adawlut. Present, D. C. Smyth, Esq. Judge.

From *J. Hawkins*, Esq. Register, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, in the Judicial Department.

Sir,

I AM directed by the court to acknowledge the receipt of your letter, No. 462, of the 30th March last, and to transmit to you, for the information of the Right hon. the Governor, copy of a letter from the Officiating Judge of Sylhet (No. 26, of the 29th ultimo), stating the mode of giving effect to decrees which adjudge persons to be slaves.

2. As the question is now before Government, I am desired at the same time to forward a copy of the papers noted in the margin, * which may be considered as possessing some interest.

I have &c.

Fort William,
28 May 1841.

(signed) *J. Hawkins*,
Register.

From the Officiating Judge of Sylhet to the Court, No. 26, dated 29 April 1841.

I HAVE the honour to acknowledge the receipt of your letter, No. 1279, of the 16th instant, forwarding a copy of a letter from the Judicial Secretary to Government, and requesting information as to the manner in which decrees adjudging slaves have been enforced in this district, in cases in which the slaves refused to return.

2. In reply, I beg to state that the practice in such cases has been to commit the slaves to gaol till they consented to return to their owners, in conformity with the orders of the court. Such a proceeding, however, has been rarely found necessary, as it appears that during the last two years only one person has been imprisoned on this account.

3. I take this opportunity of suggesting for the consideration of the court, whether it would not be an improvement on the present practice if the courts were empowered to award, as considered expedient, either the services of the slave or the sum of money at which such services are (or might fairly be) valued.

(signed) *W. H. Martin.*

From the Officiating Magistrate of Sylhet to the Court, dated 3 February 1826.

IT having been invariably the custom of this district for persons to complain in the criminal court to compel their slaves to work who may be refractory or abscond,

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* Acting magistrate of Sylhet, dated 3 February 1826.
Court's orders to the Dacca Court of Circuit, dated 17th idem.
Dacca Court of Circuit, dated 7 April 1826.
Court's orders, 28th idem.
Officiating judge, Sylhet, dated 27 December 1832.
Court's reply, 18 January 1833.

abscond, and two different opinions having been given by the Court of Circuit, (copies of whose proceedings I herewith send), I request to be informed, for my future guidance, whether such complaints are cognizable in the criminal courts, or whether a master whose slave has absconded is only at liberty to complain in the civil court for his recovery. It may be as well to remark, that at the lowest computation, three-fourths of the inhabitants of this district are slaves.

(signed) *W. J. Turquand.*

From the Court to the Dacca Court of Circuit, dated 17th February 1826.

I AM desired by the Court of Nizamut Adawlut to forward to you the accompanying copy of a letter from the acting magistrate of Zillah Sylhet, dated the 3d of February, requesting the opinion of the court as to the course of proceeding which he should adopt on complaints being preferred by masters against their slaves for refractory conduct, &c.

In reply, I am desired to request that you will communicate to the acting magistrate the opinion of the court, that in no case of that description is he authorized to issue orders from the Foujdary Court, whether the right of property may be unquestionable or not.

The copies of the proceedings submitted by the acting magistrate are dated the 22d and 26th of April 1825, and were held by your senior and 3d judge.

The other proceeding bears date the 23d of December of the same year, and was held by your late 4th judge (Mr. Steer), in the case of Sheikh Doolar *v.* Muhdeeoozumum.

The orders contained in the proceeding of the last-mentioned date (confirming the previous orders of the magistrate), besides that it is directly contrary to the opinion before recorded by two of Mr. Steer's colleagues, being contrary to the notion entertained by the court as to the legal course of proceeding, you are requested to submit the whole of the proceedings and papers connected with the case in which they originated, for the information and final orders of this court.

(signed) *W. H. Macnaghten,*
Register.

From the Dacca Court of Circuit to the Nizamut Adawlut, dated 7 April 1826.

WE beg to transmit, for the information and final orders of the Superior Court, the whole of the proceedings and papers connected with the case referred to, and required in your letter of the 17th February last.

(signed) *J. Ahmuty,*
1st Judge.
C. Smith,
4th Judge.

From the Court of Nizamut Adawlut to the Dacca Court of Circuit, dated 28th April 1826.

THE Court of Nizamut Adawlut have had before them your letter, dated the 7th instant, together with the whole of the proceedings in the case of Muhdeeoozumum which accompanied it.

2. I am now desired to communicate to you the opinion of the court that the decision of your late 4th judge (Mr. Steer), dated the 23d of December 1828, affirming the order passed by the magistrate of Sylhet in the case of Sheikh Doolar *versus* the individual above mentioned, was erroneous and should be annulled, and that persons should not be made over to slavery by a summary order passed in a Foujdary court.

3. The court have been pleased to annul Mr. Steer's order accordingly.

4. You

4. You will be pleased to furnish the magistrate of Sylhet with a copy of this letter for his information and future guidance.

5. The original proceedings which accompanied your letter are herewith returned.

(signed) *W. H. Macnaghten,*
Register.

From the Officiating Judge of Sylhet to the Court, dated 27th December 1832.

As several cases of claims preferred against slaves for leaving their masters' service occur in this district, and I can discover no instructions on the subject in the Regulations, or among the circular orders of the court, and as it appears highly desirable that some specific rules should be laid down for the guidance of the courts of justice on this important subject, I have the honour to request that you will obtain for me the opinion of the SudderDeway Adawlut on the following points.

2. Whether, and to what extent, the courts of justice are authorized to interfere on claims being preferred for the services of individuals, on the grounds of their being slaves, and having left their masters' service?

What description of slaves may be considered as legally authorized?

How the courts are to enforce a decree against an individual, against whom a decree of slavery may be adjudged, if he refuses to return to his master's service? Are the courts authorized to commit him to the civil gaol until he agrees to do so?

Are the courts competent in any cases to declare a slave to be free, and if so, under what circumstances?

3. In this district slaves are considered as property, and it has hitherto been customary, on an individual leaving his master's service, and a suit being preferred against him, on proof of the charge to pass a decree directing him to return to service, but as this practice appears to be unauthorized by any Regulation, I am desirous to obtain some specific instructions for my future guidance.

(signed) *F. Goldsbury.*

From the Court to the Officiating Judge of Sylhet, dated 18th January 1833.

I AM directed by the court to acknowledge the receipt of your letter of the 27th ultimo, requesting the court's opinion on certain points connected with the right of masters over their slaves; and in reply, to refer you to the accompanying extract from the court's proceedings under date the 29th March 1798, taken from papers relating to slavery in India, printed by order of the House of Commons, pages 74, 75.

(signed) *J. F. M. Reid,*
Register.

EXTRACT from the Proceedings of the Sudder Dewany Adawlut, under date the 29th of March 1798. No. 30.

Read the following Letter from the Judge of Zillah Chittagong to *J. H. Harrington*, Esq. Register to the Sudder Dewany Adawlut.

Sir,

IGNORANT of the practice in other zillahs in suits regarding slaves, and equally unacquainted with the intentions of Government on this very important point, I am embarrassed how to act in claims of this description; I receive repeated applications to compel the return of fugitive slaves, and lately a regular cause came on, on the following complaint.

Cummur Ally, Son of Aumeen Mahomed, *versus* Boody Daussee, Edie.

THE plaint avers that the plaintiff's father and uncle, Shanker, bought Boody, daughter of a slave, in 1118 Mugy, or 41 years ago, and caused her to be married. She had a son born of this marriage, named Daussee, and also Foofuny, a daughter; the plaintiff caused Foofuny also to be married; they all absconded; Foofuny is dead, the three others will not return.

2. One of the said three persons is a servant of Mrs. Coates, lady of the commercial resident at this place, and I have suspended all process for compelling his return, and that of the other defendants, till I can receive orders from my superiors.

3. If slavery be allowed, I wish to be informed whether I am to refer questions of this nature to the laws and customs of the Hindoos and Mahomedans and native Christians respectively, or what other rules are to guide me in determining the circumstances, periods, and authentications of cabalas and engagements, which are to be considered as constitutive of slavery in this portion of the British dominions in India; and further, whether the child of a slave is the property of the owner of the slave.

4. In conclusion, I beg leave to say that it is not to escape trouble that I make this reference, but from real ignorance how to act in a very important matter, for which I see no provision in the Regulations.

I am, &c.

Zillah Chittagong,
15 March 1798.

(signed) *J. Stonehouse*, Judge.

The court have no doubt that the spirit of Section 15, Regulation IV. 1793, (which directs that, "in suits regarding the succession, inheritance, marriage, and caste, and all religious usages and institutions, the Mahomedan laws with respect to Mahomedans, and the Hindoo laws with regard to Hindoos, are to be considered as the general rules by which the judges are to form their decisions,") should be applied to the cases of slavery noticed in the above letter; but as these cases are not expressly within the descriptions of suits specified in the above section,

Resolved, that a copy of the judge's letter, and the foregoing remark thereupon, be transmitted for the orders of the Governor-general in Council.

(A true extract.)

(signed) *J. H. Harrington*, Register.

ORDERED, that the Sudder Dewany Adawlut be informed that the Acting Governor-general in Council entirely concurs with the court in the opinion expressed by them on the reference from the judge of Chittagong regarding suits for slaves; and that Government accordingly request that they will furnish the judge with the necessary explanation for his guidance.

(True copies.)

(signed) *J. Hawkins*, Register.

(No. 963.)

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *J. Hawkins*, Esq. Register of the Sudder Dewany Adawlut.

Sir,

Judicial Dep.

I AM directed by the Right honourable the Governor of Bengal to acknowledge the receipt of your letter (No. 1961) dated the 28th ultimo, with copies of documents stating the mode of giving effect to decrees which adjudge persons to be slaves.

2. The officiating judge of Sylhet explains the practice to have been "to commit the slaves to gaol till they consented to return to their owners, in conformity with the orders of the court." As the Sudder do not notice this, either in

in your letter to my address, or, as far as appears, in any reply to Mr. Martin himself, the Governor is uncertain whether the practice is to be taken as approved by the court, or disapproved; and upon this point the court are requested to report further, stating, at the same time, what they think of Mr. Martin's proposition for an improvement of the practice.

3. It may seem doubtful whether the nature of the suit, which is probably in every case only to establish the state of slavery in the party sued, can require imprisonment in order to enforce the decree; and it is still more to be doubted whether the law can be considered to justify such imprisonment. In reporting on this point, the court might transmit an abstract translation of an actual plaint and a decree, such as Mr. Martin has alluded to; and it would be well also to send up a translation of the warrant used for imprisoning a defendant in such cases. Further, his Lordship desires to be informed whether, so long as the slave may refuse to return to his owner, the imprisonment is uninterrupted. Perhaps a suit for a slave's services may ordinarily specify his value; and the defendant, when cast in such a suit, would be in the position of a debtor to the amount of his estimated value, who, being unable to pay, is imprisoned in execution. But to imprisonment on such a ground (the fairest, as it seems to his Lordship, on which such imprisonment can be at all justified), there would always be a limit, independent of any consent on the part of the defendant; and the debtor, on proved insolvency, would be absolutely set free. According to the terms of Mr. Martin's explanation, the imprisonment might be perpetual, even though the slave were insolvent.

I have, &c.

Fort William,
15 June 1841.

(signed) *J. F. Halliday*,
Secretary to Government of Bengal.

(No. 2718.)

From *J. Hawkins*, Esq. Register, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, in the Judicial Department.

Sir,

Sudder Dewanny Adawlut.
Present,—R. H. Rattray, C. Tucker, and E. Lee Warner, esqrs., judges; and J. F. M. Reid, esq., temporary judge.

WITH reference to your letter (No. 963) of the 15th ultimo, I am directed by the court to transmit to you, for the purpose of being laid before the Right honourable the Governor, copy of a letter from the officiating judge of Sylhet, regarding the imprisonment of refractory slaves, and of the translates of plaint and warrant which accompanied it.

2. It appears to the court that the object of complainants, in cases of the nature under consideration, is not to recover the value, but the possession, of fugitive or refractory slaves; and that the incarceration of those who have been adjudged to be slaves, and yet still refuse to return to their masters, is illegal, the only legal mode of executing such a decree being to make over the slaves to their owner. It is obvious, however, that against slaves who are unwilling to work, the legal mode of executing such a decree must be wholly inefficient, and that imprisonment was resorted to as a means of coercing adjudged slaves into the performance of their duty.

3. In such cases the court feel disposed to entertain favourably the suggestion of Mr. Martin, that the courts should be empowered to adjudge the value of the slave, in order that persons declared to be bondsmen may have the opportunity of redeeming themselves, if unwilling to return to servitude.

I have, &c.

Fort William,
23 July 1841.

(signed) *J. Hawkins*, Register.

From the Officiating Judge of Sylhet, to the Court; dated 8th July 1841, No. 34.

I HAVE the honour to acknowledge the receipt of your letter (No. 2286) of the 25th June 1841, enclosing a copy of a letter from the Secretary to Government, Judicial Department, and directing me to submit abstract translations of a plaint, decree, and warrant in a case relating to right in slaves.

2. In forwarding the abstract translations required, I beg to explain that the warrant for imprisoning the defendants in this case cannot be found; and I have, therefore, forwarded a copy of the order directing their imprisonment, together with a translated copy of the warrant for their release.

It will be observed, that in this case the defendants were made over to their owners after a short imprisonment. This was ordered on a petition presented by the plaintiffs, which represented that they derived no benefit from the imprisonment of the defendants; that they had sued for their services, and not to have to maintain them idly in gaol; that they could not afford to pay six rupees per month; and that it was not to be expected that slaves, thus living without labour and well fed, would ever consent to return to their former labours. The slaves were accordingly sent back under charge of two peons, but, as I learn from a pleader who resides in the same village, immediately left their owners, and have never since rendered service to them.

For 3 Slaves, at the rate of 2 rupees per mensem, for each prisoner.

4. I have thought it proper to mention this, because, although it has not been the usual practice in this district to make over the slaves to their owners, it is the only direct mode of carrying such decrees into execution; and the plaintiffs in this case remonstrated against the imprisonment of the slaves at the expense of the master, in order to compel the former to return to service. On the other hand, if you make over to his owner an unwilling slave, there is the risk of his being ill-treated; and if he chooses to run away again immediately, as often as the court makes him over, his owner must either keep him in a state of illegal and unprofitable imprisonment, or he will eventually get the better both of his master and the court.

5. In further explanation of the particulars required in the 3d paragraph of the letter from the Judicial Secretary, I beg to state that suits for establishing a right in slaves usually pray that the slave be compelled to return to the service of the owners; and the decree of the court directs that the slave be caused to return to his former state of slavery. Although the plaint is laid at the estimated value of the slave, yet the claim is made and the decree passed for the services of the slave, and not for the estimated value of them; I cannot find that any slave has been imprisoned, in execution of such a decree, for more than four or five months; but, provided the slave continued to refuse to return to his master, and the master to pay in the usual subsistence money, I do not see that there is any fixed limit to such imprisonment. The judge would, no doubt, after a time, order the prisoner's release; and it is improbable that the decree holder would long continue to pay for his slave's imprisonment at a rate which would, in a very few months, exceed the actual value of the slave.

6. I beg to add, that the proposition contained in the 3d paragraph of my letter, under date 29th April, would, I consider, be beneficial, as affording a remedy for occasional cases of hardship, when a slave might be able and willing to pay the actual value of his services to obtain his freedom. I do not think an owner can fairly complain who receives the money value of the services of a slave, as with the same he can procure a willing instead of an unwilling servant; whilst there are many cases in which the offspring of slaves, who have settled as ryots, or married in other parts of the country, could pay or procure from others their estimated value, and, by purchasing freedom, could escape a serious evil to themselves, without any injustice to those who might possess a right of property in them. Ill-treatment of slaves is, I believe, rare; but there may be cases in which a slave would willingly transfer his services to another to escape from a particular master; and if it was understood that the courts might either award the services of a slave, or the value of such services, such a knowledge would probably much facilitate the purchase by slaves of their freedom at its fair price.

(signed) *W. H. Martin*, Officiating Judge.

ABSTRACT of actual Plaint in Case relating to Right in Slaves.

THE petition of plaint of Mussamat Goosain Beebee, Mahomed Moossun, &c. is, "that Sonai, Monai, and Danish (males), Soobun and Fonnan (females), are our hereditary slaves; that Khosal the father, and Aga the mother, of these slaves, were the slaves of our father; that Mussamat Sona, the mother of Khoshal, was also the slave of our father, and that Ikteyar, the father of the said

said Sona, was in like manner the slave of our ancestors; that notwithstanding this, in 1225 B. S. Sona, Monai, and other defendants, ran away from us, and have taken up their residence in the lands of Mahomed Kamil, in pergunnah Beraya. These slaves were fed sometimes from our table, and sometimes separately, but lived in the same house; we fed and clothed them, and they served us as slaves. They have run away without reason; indeed, the daughter of Sona, with her son, still lives with one of the family. We complained to the magistrate, but were referred to the civil court; so we now (valuing the services of each slave at 12*rs.* 12*as.* 10*ps.*, in all, for five slaves, 64 rupees), pray that the court, after taking from us due proof, will order the said slaves to return and serve us in the usual manner."

1 December 1824.

Brief ABSTRACT of Decree passed by Mr. *C. Barry*, Register, on the 18th February 1828.

MUSSUMAUT GOOSAIN BEEBEE, Mahomed Moossun, &c. plaintiffs; Sonai, Monai, Danish, male slaves; Soobun and Fonnan, slave girls, Mahomed Kamil, &c. defendants, claim right of property in the above-mentioned slaves, valued at 64 rupees.

This decree recapitulates the plaint, which states that the defendants are the hereditary slaves of the plaintiffs, and prayed that the court order them to return and serve the plaintiffs in that capacity.

The defendants deny the justice of the claim; affirm that they are free; that Mussomat Sona, their grandmother, was married (by nikah) by Mahomed Ruffeh, the uncle of plaintiffs; and that one of the issue of such union was Khoshal, the father of the defendants. They add, that Mussomat Sonai was the daughter of a free man, and Aga, their mother, was also the daughter of a free man. Their assertions are denied by plaintiffs. The decree then states that the witnesses of the plaintiffs have proved their claim, and that the defendants are hereditary slaves, and, as such, rendered service to the plaintiffs; that the witnesses of the defendants have proved none of their assertions; indeed, one of their witnesses has given evidence that the defendants are the hereditary slaves of the plaintiffs; it is, therefore, ordered that the defendants Sonai, Monai, Danish, Soobun, and Fonnan, shall be obliged to return to the service of their owners, each party to pay their own costs.

Order passed on the 14th December 1832, in a case of execution of decree, adjudging the services of slaves.

This day the decree in this case was read in the presence of the slaves, as the three slaves who have been apprehended refused to return to the service of the decree holder; it is, therefore, ordered that they be imprisoned in the civil gaol.

WARRANT for Release of Slaves, making over the same to the Owners.

Shaik Golam, Murtezo Nazir.

WHEREAS Mahomed Moossun, &c. &c. have petitioned that the court do order to be made over to them Sonai, Monai, and Danish, their slaves, now imprisoned in the gaol in execution of a decree, because the said slaves refused to return to the service of the petitioners; it is, therefore, ordered that the nazir do make over the said persons to the petitioners, taking a receipt for them from the same.

2 February 1833.

(True copies.)

(signed) *J. Hawkins*, Register.

Legis. Cons. 6 Sept. 1841. No. 15.

MINUTE by the Honourable *A. Amos*, Esq. dated 5 August 1841.

I PROPOSE in the first instance to go through the Minutes of Council, expressing my assent or dissent with regard to the different propositions contained in them, and adverting to such objections as have been made to the report. I will then proceed to express my own views.

2. I entirely agree with the Governor-general in opinion, that if an Act be passed prohibitory of magistrates interfering to enforce any alleged rights of slave-owners, and rendering whatever would be criminal act, if committed against a freeman, equally criminal if committed against a slave, such an Act would supersede the necessity of most, if not all, of the detailed provisions recommended by the Law Commissioners; for it appears to me that the recommendation of the minority of the Law Commissioners to pass an Act so general in its character is quite inconsistent with minute provisions respecting sales, emancipations, and other partial remedies. The recommendation of the minority of the Law Commission would point out to the slave a way of emancipating himself, without any kind of formality, and whenever he pleased, and at the same time would indicate a multitude of ways of emancipating himself according to prescribed forms, requiring the consent of his master or the intervention of magistrates; it would confer freedom, and at the same time make elaborate provisions adapted to the continuance of slavery.

3. I agree further with the Governor-general in opinion, that passing the above-mentioned Act would be simply giving greater publicity and authority, in part, to the practice of magistrates in their abstaining from all active interference on behalf of masters, which, under the sanction or directions of Government, has become nearly universal, and for the rest to the Madras futwa of the date of 10th February 1841.

4. I have doubts as to the sufficiency of the reason assigned for prohibiting the interference of the magistrates, when it would be in favour of the alleged master, viz. that slavery is not to be presumed against any person summarily, especially if the prohibiting such interference be considered equivalent to denying all legal remedy of a practical nature.

5. I am not impressed in like manner with the Governor-general as to the accuracy of a statement, which appears to me to have influenced several of his Lordship's reasonings; viz. "That it will be found that almost, if not at this time quite universally, no compulsion by a master over his dependent is admitted by our criminal courts, and that any force used by him towards his so-called slave is punished just as it would be if used towards a freeman." Though I admit that if the Madras futwa of the date of February 10, 1841, be considered as declaring the law on the subject with any approach to truth, it would go far to prove the statement substantially correct.

6. I have been unable, after many endeavours, to adopt the opinion upon which so much of his Lordship's reasoning and recommendations appear to me to be founded, that the criminal law is correctly stated in the Madras futwa, dated February 10, 1841. When I shall come to examine this futwa more particularly, I trust it will be seen that I do not assume any greater competency as a lawyer to form an opinion upon it than any other member of Council; but without impeaching any judgment upon the views entertained in this and the next Minute, I think the subject may deserve to be regarded in a different light from that of a mere question of a Mahomedan law, which is the aspect under which it has been treated.

7. Upon the grounds stated in pp. 5 and 6, of the first Report on Slavery of the Law Commission, I do not feel convinced that "the Mahomedan criminal law, being that which, with specified limitations and exceptions, is administered in our courts, there is no reason why any benefit which it gives to persons in a condition of servitude not of the strict kind, that alone it recognises and sanctions, should be in any degree denied or abridged;" at least I do not distinctly see the application of this reasoning to the question at issue, viz. whether the British Government, in applying the Mahomedan criminal code for the government of Hindoos, have interfered with the Hindoo law of status?

8. Though I have concurred with the Commissioners in various reasons showing the inefficacy and impracticability of compensation, I have not been convinced of the fact, "that the authority, wherever exercised, rests upon no valid ground," and still less of the force of the reasoning as regards districts where

where slavery has not ceased to exist, "that it has actually ceased to exist in by far the greater number of our districts."

9. I think the Minute under consideration may very probably lead to a misconception, which, upon close attention, it does not appear to me to warrant, viz. that the majority of the Commissioners had proposed the "concession" of an authority of moderate correction and restraint, and recommend committing that authority to masters. It would be evident, from an inspection of the Report, that what the majority of the Commissioners observe is to this effect; viz. having taken away all remedy by coercion or restraint through the intervention of magistrates, whereby it is generally admitted all practical support, in which the state is any way active, is taken away, if the master's power of moderate correction, and of restraint from absconding, be also taken away, it is tantamount to the absolute abolition of slavery. The majority of the Commissioners feel all the repugnance felt by his Lordship to entrusting the most moderate correction or restraint to masters, though, under the various important checks which they have detailed, they think that the not taking away of these objectionable powers from masters is the least inexpedient of the several alternative evils which they have enumerated. Whether the evil of allowing a master, as he has been accustomed, to prevent his slave from absconding, be an evil which preponderates over that of transferring this power to the magistrates, his Lordship has not, I think, particularly discussed; nor has his Lordship suggested any other alternative but what in effect amounts to uncompensated abolition. In objecting to the powers of coercion and restraint continuing in masters (not being committed or conceded to them), his Lordship only apparently, and not really, differs from the majority of the Commissioners. The point upon which the Commissioners differ from his Lordship is, they do not conceive the ancient evils in question, great as they admit them to be, but diminished by several important checks, and subjected to further checks under their recommendations, are so great as those which would probably attend a sudden uncompensated abolition; and moreover, they think that by imposing further checks on the evils in question, practical good must result, but that an attempt at absolute uncompensated abolition is very likely to prove a futile measure.

10. With regard to the opinion that "the adoption of all the minute and detailed provisions recommended by the Law Commissioners would much rather impede than advance the abolition of slavery," I entirely agree with it, provided the Act proposed be passed; but if slavery be not avowedly abolished, or indirectly, but virtually, abolished according to the proposed Act, then I think that although all the provisions suggested by the Commissioners may not be expedient, yet the Commissioners will have performed a very useful task in laying before Government all the provisions which have occurred to them as tending to ameliorate the condition of slavery; and, upon the same supposition that slavery is not openly or indirectly abolished, some at least of the propositions contained in the Report would, I am persuaded, meet with his Lordship's concurrence, as being in the nature of the rules brought forward by Mr. Canning, which he characterizes as operating to mitigate the system of slavery, and render it more tolerable in its existence, and as opening ways by which slavery itself may escape gradually, and as it were imperceptibly, without the shock of a convulsion.

11. Though the Commissioners were sensible that what they proposed would recognize the validity of transfers of slaves, yet they thought that whilst it was obvious they could not ameliorate slavery by law without recognizing the validity of the status, that status, and the validity of transfers even, had been fully recognized in Indian legislation, in the most systematic manner, so late as 1827, and though less formally, also in 1832, independently of other public modes of recognition. It may be observed with reference to the remark, "If we connect the public officers with registry of the sales of persons as slaves, how shall we be able at any future time to treat those transactions as otherwise than perfectly valid, or to deal with claims of consideration and compensation which may be preferred by purchasers?" That the registration of sales of slaves by magistrates is already a part of the law of one of our presidencies, *see* sect. 31, Regulation XIV. of 1827, Bombay code; and I am not sure that the admission contained in this query, when coupled with the Bombay Regulation, may not be considered as qualifying the other opinions in the Minute against compensation. Besides, I do not see that the registering of transfers by magistrates is a more

solemn recognition of the status of slavery on the part of Government, and, as such, giving title to compensation, than the sale of slaves in execution of decrees, which has been habitually practised.

12. I fully concur in opinion, that the civil law of slavery, if the Act proposed be passed, cannot be deemed a "pressing and general evil, and that all which is legally coercive in the maintenance of the status of slavery will be destroyed;" but upon the question, whether, if we go to the length of passing the Act in question, we should not directly and completely abolish slavery, I prefer the view of Mr. Bird to that of the Governor-general; for I think Mr. Bird's plan will avoid many nominal and perhaps real inconsistencies which the proposed Act would create; and I think the Act would not indicate clearly to master or slave the change which Government was making; neither would it give satisfaction to the body of persons in England who are pressing the abolition of slavery in India. But, possibly from a caution incident to my own comparatively slender experience of what relates to the feelings and habits of the Indian community, I think, with the utmost deference, that these authorities both go too far, and that for the sake of attaining our common object immediately, their proposals would be attended with the risk of great dangers, and of frustrating the very thing we have all in view, whilst in the opinion of some uninterested persons at least, who have devoted great attention to the subject, we should, by acting on those proposals, in our desire to promote liberty and humanity, be unconsciously doing an act of signal injustice. I may add, that I feel considerable support in this part of the case by finding that Mr. Prinsep agrees with me in deprecating both the proposals of the Governor-general and of Mr. Bird.

13. With regard to the Minute of Mr. Bird I fully agree, both in his conclusion, and in the reasons for that conclusion, that if there is no sufficient objection to passing the proposed law, on the ground of its being too violent an infraction of existing rights and habits of society, or of its being unjust towards persons entitled to slave labour, we ought to abolish slavery in the most absolute and the plainest terms.

14. I fully agree with Mr. Bird in thinking that the recommendations of the minority of the Commissioners are quite inconsistent with themselves, for the reasons he has stated, as well as for the distinct reasons contained in his Lordship's Minute; a declaration in favour of the continuance of slavery, and a series of minute provisions for its regulation, would stand as singular clauses of "An Act for enabling every Slave to become his own Master."

15. I am not quite satisfied of the fact that, "in India, slavery is little more than a name;" at least I do not think that this conclusion can be safely inferred, when stated to rest upon an hypothesis, that according to the present law and practice of India, "The labourer knows that if he idles, his master dare not strike him; that if he absconds, his master will not dare to confine him; and that his master can enforce a claim to servitude only by taking more trouble, losing more time, and spending more money than the service is worth." Such was obviously not the meaning of the persons whose words are quoted; such, however, I apprehend, would be the real effect of the Act proposed; and I admit that the futwa of the 10th February 1841 would go far to show that the statement was true, if not in fact, at least in point of law, without any new legislation; but I think it will appear in the sequel that the futwa in question is not entitled to the slightest consideration, even as a statement of law. Leaving that futwa for after examination, it may be noticed by the way, that at Bombay the judges of the Sudder Court are of opinion that the magistrates are bound by the Bombay code to compel slaves to work.

16. I have not been able to satisfy myself as to the conclusions, which would give me the highest gratification could I adopt them. "That a declaration of the entire extinction of slavery might be made without the slightest difficulty; that there would be no discontent at Bombay and Bengal;" and "that there is every reason to suppose that in Madras emancipation would be received as a matter of indifference." I do not collect on what ground local opinions on this subject deserve to be totally disregarded, as that of the Superintendent of Coorg; that he "knows of no change that would be likely to give rise to so much alarm and bad feeling as the adoption of any measures likely to weaken the right which masters now possess to the labour of their slaves."

17. Though I should attribute weight to the reasoning founded on the precedents

cedents of Sir C. Metcalfe's declaration at Delhi, the Bombay rules of 1820, and the prohibition of suttee, yet I should not be equally disposed to assign the same cogency to the argument derived from these precedents. It may be observed that the only information obtained as to the operation of the Bombay rules of 1820 is, that the sales of slaves had not diminished, but that their prices had been increased; and in 1827 these rules were superseded, and the sale of slaves expressly permitted, according to systematic arrangements, including transfers under magisterial authority by a formal Act of Legislature. It may be observed, moreover, with regard to suttee, that although it may afford some analogy to show that our authority will not be resisted, it has not equal relevancy to a question of justice as to taking away valuable rights long recognised and enforced by the British Government.

18. I have been unable to satisfy myself that the taking away from masters such rights to the labour of slaves as they now practically enjoy "would be inflicting upon the holders of this description of property no injury of which they could reasonably complain." The position must obviously be read in connexion with what is afterwards stated in the Minute, "That the probability is, that even with the aid of the Hindoo and Mahomedan law, but few claims arising out of the state of slavery, if brought for regular inquiry before a court, could be established." Now I am apprehensive that this probability may be here stated too broadly; for it would seem that the Madras courts have been long in the constant practice of establishing great numbers of such claims. And if an impartial inquiry be afforded, such claims might, I conceive, be more easily established than such as depend upon most other controverted facts. It may be noticed, that the judges of the western provincial court for Malabar and Canara observe (App. 446), 'The competency of the master to transfer the slave by sale, mortgage, or lease, according to the ancient laws and customs of the country, has never been disputed or doubted in these provinces.'"

19. As I have observed with reference to the former Minute, I do not feel satisfied with the force of the argument against compensation, as applied to districts where a right to slave labour has been recognised time out of mind, and is now generally enforced, "that the authority has actually ceased to exist in by far the greater number of our districts," even admitting that the hypothesis is not too broadly laid down. Nor do I feel convinced by the argument, as directed against compensation, "that the state of slavery in India is not to be assumed against any person summarily."

20. I have before observed, that if even the Act proposed be adopted, and still more, if a declaration of general and absolute emancipation be adopted, most, if not all, the detailed provisions, whether proposed by the majority or minority of the Commissioners, become nugatory, and that their operation would only be to continue what at the same moment was annihilated. But if slavery in India is not to be totally abolished, either directly, according to Mr. Bird, or virtually, but indirectly, according to the Governor-general, I am not sure that I collect from the Minutes that what ought to be done in such a conjuncture has been very minutely examined. Nor was this to be expected, because it is the decided scope of both those Minutes to propose courses, the adoption of which would exclude the supposed conjuncture. But if such a conjuncture shall arise, I doubt whether the opinion that, "If anything be done at all, nothing will answer the purpose short of a declaration," &c. might not require some modification. I am disposed to think that in the conjuncture supposed, some selections might be made from the numberless minute and detailed provisions set forth by both sets of Commissioners, which might be thought more beneficial as correcting the abuses of slavery, and facilitating emancipation from it, than injurious on account of their supposed tendency to strengthen and prolong its obligations. It may be observed that, in point of fact, the number of provisions suggested by both sets of Commissioners are, when put together, about 30. The provisions of the Bombay Code, which embrace only a small part of the subject, are in number 10; whilst of those in the Report, several are auxiliary merely; as, for instance, what courts are to take cognizance, and then what appeal is to be? Others relate to apprenticeships and the hiring of free persons, which may be very deserving of consideration, even though slavery should be abolished, in order to prevent its continuance under colourable forms. Mr. Prinsep rightly observes, that "some of the recommendations are of obvious expediency, which would of course be introduced into any law that might be framed," and that "others have the object merely of removing

doubts, and producing uniformity in the existing practice of our public functionaries."

21. With regard to Mr. Prinsep's Minute, I entirely agree with its leading principle, "that the work of abolition is in progress, and that too much interference would probably defeat or retard the end; and that it is a question whether to apply any stimulus by legislation, at the risk of retarding or limiting the efforts now making towards the recognition of universal freedom."

22. I agree also with Mr. Prinsep in thinking that opinions have been expressed upon the subject of Indian slavery, by a large body of persons in England, which are highly exaggerated and inappropriate; and that even where they emanate from the pure feelings of humanity, they will often be found to be the result of an imperfect or erroneous view of facts. I received great pleasure in collecting from Mr. Prinsep's Minute, that now every individual, both in Council and the Law Commission, is agreed upon the mild character of what has been termed slavery in India, and also on the fact that it is gradually falling into desuetude. With reference to an apt historical example adverted to by Mr. Prinsep, I may add that the remarks of Sir John Smith, in his "Commonwealth of England," written in the reign of Edward 6th, as to the gradual decay of slavery in England and France, are suitable to India, though I apprehend that legal slavery in England was of a more severe character than what is exhibited in the Report. It may be observed that the friends of abolition have sometimes been very anxious to distinguish the slavery of the colonies from English villeinage, which in its nature bears a considerable resemblance to the Indian slavery of caste.

23. I am glad to have the support of Mr. Prinsep's opinion, that the proposed law by which masters should be made liable as for assault, in exercising the only practical means left them of enforcing the service of slaves, would be tantamount to an encouragement to the slave to refuse to labour, would be regarded as an act of perpetual and immediate emancipation, bringing upon the Government claims for compensation from all parts of the country.

24. I notice an important observation in Mr. Prinsep's Minute, that, "if the whole of India were now in the same condition as Malabar, I think I should have admitted the necessity of undermining the institutions of slavery, which we find there, by positive laws of the kind proposed by the Law Commission." My own opinions have been materially influenced by the condition of slavery in the Madras presidency. In confining the observation to Malabar, there is an obvious omission of the 60,000 (sixty thousand), and according to one account 82,000, slaves of Canara, besides those of the Tamil country; and with the greatest deference, I may remark that the Council has not the advantage of any of its members being practically conversant with the nature of Madras slavery, and therefore their opinions on the subject are not entitled to the same very high weight which attaches to their opinions connected with Bengal; I must own my regret that I cannot coincide with the views of the actual state of slavery in the Madras presidency taken by any of the members of Council. I apprehend that slavery of an agrestic kind exists in the Madras presidency very widely and numerously; that it is amply confirmed by usage and law, and that any abrupt prohibition of it by Government would be most sensitively felt, and would materially affect the nearest interests of a great mass of population.

25. Upon the subject of adopting the recommendations of the Law Commission generally, I differ in opinion with Mr. Prinsep, that the progressive impairing of slavery can be expediently left to the courts of justice. I have a strong conviction, and in this I think I shall be supported by Mr. Bird, that it is extremely inexpedient to allow our courts and magistrates to warp the law for the purpose of undermining any practices, however odious; such a course must destroy all confidence in the administration of British justice; it encourages lax and varying principles of decision to which Indian tribunals, under the notion of "equity and good conscience," are far too prone. Besides which, the uncertainty arising from the law being differently administered in different districts, and by successive functionaries in the same district, is an intolerable evil; any interference of Government executively in impeding the course of justice by preventing the sale of slaves in execution of decrees, or otherwise substituting its will for the dictates of law, cannot be too strongly reprobated. I may add that the administration of law by our courts and magistrates in matters of slavery, as it is detailed in the Appendix to the Report, is not such as it is desirable to continue, still less to encourage.

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26. On the effect of particular recommendations proposed by the Law Commissioners, the other members of Council are very much indeed more competent to decide than myself. Some observations occur to me with reference to Mr. Prinsep's remarks upon the subject; but I think it will be more convenient to reserve them until it may be found necessary to enter on the consideration of such details.

27. It may be allowed to correct a mistake which runs through several paragraphs of Mr. Prinsep's Minute, viz. that the majority of the Commissioners are guilty of an inconsistency in not recommending that the property of slaves should be secured to them. The majority of the Commissioners do make that recommendation in page 376 of the Report. I am happy that their view is so far confirmed by Mr. Prinsep, that he thinks that if there be legislation at all, this is the first measure which should be adopted.

28. Having thus expressed my assent or dissent with regard to the different propositions of the other members of Council, I do not think it necessary to go over the same grounds which I have done in conjunction with the Commissioners in the Report. I would not, for the reasons there stated, abolish slavery directly with Mr. Bird, or pass the Act proposed by the Governor-general, which would abolish it virtually, though indirectly. I would not abstain altogether from legislation with Mr. Prinsep, because I deprecate making use of the bias of the courts as a means of undermining slavery; because the administration of justice in matters of slavery requires to be made more uniform and certain, and because I think more good than mischief may be produced by making provisions for restraining abuses of slavery and for facilitating emancipations. The provisions for this purpose contained in the Report may be thought too numerous, and falling occasionally too much into minute details. But this is a fault on the right side, as thereby the discretion of Government would be chiefly exercised in selecting, instead of devising expedients, which I conceive is, perhaps, a function more appropriate to it.

29. I am happy that the Commissioners are confirmed by Mr. Prinsep in their opinion, that "we ought to proceed with caution, letting the slavery that exists continue until it expires naturally under a system of discouragement; and so allowing the condition of society to take the change desired without any arbitrary interference." It appears to me that objections to the immediate abolition of slavery may be founded on the danger of public commotion, or more probably, among a timid and uncombined population, of concealed disaffection, in the end more injurious to the British Government, on an impression that we should violate our pledge of not interfering with the ancient laws of the country, especially those which for a series of years we have upheld in the solemn manner, and which affect the livelihood of great numbers throughout whole districts; and that we should be doing injustice by depriving many individuals of long acknowledged and valuable rights without compensation. I look also to the probable impracticability of dissolving, by any positive enactment of our own making, ties of society which unite hundreds of thousands of persons according to usages dating long anterior to the British Government having any connexion with the country, though I think that what may be impracticable for general good, may nevertheless, in this instance, be productive of considerable irritation, and occasion much misery.

30. I would, therefore, protect and accelerate, by the methods proposed in the Report, the operation of the circumstances which are tending so favourably of themselves to work out the extinction of slavery in India; I would not abruptly anticipate the gradual but inevitable course of events, by substituting this wisdom of man for that of nature. It will, I think, appear, that the progress of human improvement in various ages and countries has been advanced less by any fiats of government, than by strengthening the checks universally acknowledged to be operating for the destruction of abuses, and which are the more safe and effectual as tried by experience, and as based on that progressive revolution which society is undergoing towards the attainment of an order it has of itself a tendency to assume.

31. I would further remark, what in making the Report would have been irrelevant, that if the proposed Act be passed, it may be proper in the preamble to state its operation very fully; for I apprehend few of the parties interested would collect the real operation of the enactment from the bare perusal of its terms. I am warranted in this opinion by the circumstance that both the Ma-

dras Government and the Madras Sudder Court, in their most recent communication upon this subject, observe, that if compensation be deemed just in the case of an enactment prohibiting assaults committed on slaves wherever they are prohibited if committed on freemen, *à fortiori* it will be just if an Act be passed prohibiting the sales of slaves in execution under decrees; but the Madras authorities could never have entertained this opinion, if it had been stated in the preamble of the Act, agreeably to its actual operation, that "Whereas Government has taken away all but one practical mode of a compulsory kind for preventing slaves from absconding, and for compelling labour, obedience, or respect to masters to the smallest extent, and it is desirable to take away this mode also, it is therefore enacted," &c.; or thus, "Whereas it is expedient to abolish the assumed right of persons pretending to be masters of slaves to correct moderately or otherwise the persons alleged to be slaves, for neglect or disobedience, or to do anything which in law amounts to an assault, for the purpose of preventing such persons from absconding, or bringing them back."

32. It is remarkable that in several places to be found in the Appendix, judicial functionaries state that there is no distinction in criminal courts with regard to assaults or other offences committed by masters or by slaves, and yet in the very same communications they acknowledge the master's right of moderate correction for neglect, and of restraint from absconding, and even quote authorities for the point. The proposed Act contains the like general terms, and from the manner in which these functionaries express themselves, I apprehend it bears a popular or superficial import quite different from its real effect.

33. To understand the Act, it is necessary to divide it into two parts. It provides, first, in effect, that if a master in correcting his slave or restraining him from absconding, goes beyond a very moderate assault, or if the correction be without adequate cause, the master shall not say "these are causes for which I may use violent correction," or I may correct my own slave without cause; nor shall he say that "my evidence or personal treatment in court is to be differently regarded from that of my slave." Now so far the Act introduces nothing which has not been always well established and well known law throughout India. Nevertheless this nothing would, if it had any new effect, be so consonant to obvious justice and humanity, as at once must kindle the feelings of every person not familiar with the actual state of the law and practice in India: so far, indeed, the Act works no change; but its general terms may nevertheless prevent a distinct comprehension, and prejudice the consideration of its further import, and of the real change it does effect.

34. For, under general terms applicable to grievous assaults without cause, it includes, secondly, that moderate correction and restraint which, under various important checks, is the last practical means left to maintain slavery in India. The momentous effect of the Act, that of protecting idle, disobedient, or runaway slaves, is out of view, to be discerned only by the telescopic glass of reasoning. A slight kind of assault with cause, is indeed inclusively prohibited, but in terms including equally aggravated assaults without cause, which were prohibited before, whilst by a consequence nowhere alluded to in the Act, an important civil right is annihilated. Government having reduced the practical remedies of a right to one which has something objectionable connected with it, afterwards gets rid of the right by an enactment apparently aimed only at the objectionable matter in abstracts. It has generally been considered a principle of jurisprudence, that where there is a right, the State should supply a practical remedy, but here the right is destroyed by a novel process, that of an atrophy, and successive exhaustions of remedies.

35. And I may notice a popular objection to the continuance of slavery in any shape, which I have no doubt influences very many persons in England, and some in this country. It is argued that slavery is so contrary to natural law, justice, and humanity, that no one can with reason talk of any rights under it, complain of its abolition, or demand compensation. Though the system be sanctioned by usage, these persons would say, so also is Thuggee and various other customs to which the maxim of the civil law applies, "Malus usus abolendus est." Here I would distinguish. The recent futwa states, that the slaves of the country in the Madras presidency, whether of the dher or paria, or any other caste, have all been sold by their parents. This will be shown to be one of the grossest misrepresentations of fact ever made in any public document. The sales of children may, I think, be viewed, for the reasons stated in

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the Report, to be an abuse of the ancient system of India slavery. The practice, I conceive, is illegal, without requiring any new law to abolish it, though, like other abuses of slavery, it may require more stringent checks than can be applied under the present law. The abolition of the practice, though on a recent occasion it was not thought to be a prudent measure by the Madras government, would not, I apprehend, be inconsistent with anything contained in our regulations, or with the practice of our courts. It would, at least, be free from any objection of interfering with existing rights.

36. But with regard to the great bulk of the slave population, and especially the Madras agrestic slaves, who have not been free born, and sold by parents, is it not much too late to denounce as scandalous and suicidal the usages which existed long before our connexion with India, and of which the British Government made no exception in pledging itself to maintain the ancient usages of the country, those usages of slavery which have been particularly regulated by Acts of the Legislature, recognised in proclamations of Government, enforced by decrees of courts, and proceedings of every grade of public officers, from the first dawning of our power down to the present day. What would the native community think of the consistency of the moral feelings, to the promptings of which the English nation had, as far as they could judge, become so suddenly alive? How can they calculate in future that the transactions in which they engage, and the speculations in which they embark, however recognised by proceedings of Government, by laws and by courts of justice, may not be suddenly reprobated and annulled? And if disinterested persons may be dissatisfied with these violent changes in a land where all changes are repugnant to national feelings, what must be expected from those who, as Captain Le Hardy informs us, with reference to a much less violent measure, "would no doubt regard any change of what had hitherto been customary as an encouragement to insubordination amongst their slaves, and as leading to innovations which, in their opinion, could not fail in the end to cause the utter ruin of their families?"

37. I conceive that it must greatly aggravate discontent if it should appear that this important measure of the abolition of slavery were based on a perverted declaration of the law pronounced by a high judicial tribunal. For I conceive that a confidence in the courts of justice of a nation is a more secure tie on the allegiance of a people even than the mildness and wisdom of the executive government. I propose, then, to conclude this Minute with an inquiry into the statements of law and fact contained in the recent Madras futwa, of the date of the 10th of February 1841, and a notice of a still more recent reference from the judges of the Madras Sudder Court, which appears to me at direct variance with that futwa.

38. The substance of the futwa is to this effect, viz. that a true slave is a person who may have been acquired by way of booty in a Mussulman war, "and that a dher slave (in the particular instance) and also the slaves of this country of any other caste, or received from their parents during famine, or at other times," that no such slaves are "true slaves," and that consequently, under the Mahomedan law, the slaves of the Madras presidency cannot be sold and purchased, they may go without permission when and where they please; for such liabilities and restrictions are applicable only to true slaves, as defined by the Mahomedan law.

39. The first matter for consideration is whether the lawfulness of the status of slavery in this country among Hindoos is a question fit to be determined by a reference to the Mahomedan law officers? It is obviously not an ordinary question of Mahomedan law, the Mahomedan code relating merely to the rights and obligations of Mahomedans; neither is it the more difficult question of the recognition of the Hindoo law of status by the Mahomedan conquerors, though even this view of the subject is not canvassed in the futwa, or by the Madras court. But the question depends on the nature and effect of the application of the Mahomedan criminal law to the circumstances of Hindoos by the British Government; did the British Government, in applying the Mahomedan criminal law to Hindoos, destroy for all purposes of criminal law the Hindoo status of slavery, marriage, fraternity, and other civil relations? What say the original Acts of the British Government upon the subject? What the constant usage? What the decrees of courts of justice? What the most solemn official transactions?

40. This question is fully considered by the Law Commissioners in their

First Report (pp. 5 and 6). They came to an unanimous and unhesitating conclusion, that the Indian criminal courts are bound to recognise as a "true slave" whoever is a slave by the Hindoo, as distinguished from the Mahomedan law, and to deal with a Hindoo slave (being such by the custom of the country and not taken in war), just in the same way as they would deal with a "true slave" under the Mahomedan law.

41. The determination of such a question appears to be peculiarly within the province of the Law Commission; but it is no new opinion taken up by the Law Commission, for in the year 1820 the Madras Foujdary Udalut and their law officers, with express reference to the churma slaves of Malabar, issued a circular, defining by legal limits the rights of masters over their slaves, which circular was intended to serve as a rule for the guidance of all criminal courts and magistrates. The circular declares, that under the Mahomedan criminal law (as it must be applied to Hindoos) a master is justified in inflicting correction on his slave for acts by which tazeer is incurred; but that a master is not justified in punishing his slave except it be for such acts, and when a master does punish his slave for them, the punishment must not exceed the lawful extent of tazeer.

42. Ten years after the promulgation of this circular the judges of the court of Foujdary Adawlut, speaking with reference to the customary slaves of the country, and not to "true slaves" by the Mahomedan law, state that they do not think the correction which a master can legally inflict upon a slave could be defined with greater precision than is done by the circular of 1820. This confirmation of the opinion of the judges of the Foujdary Court in 1820, by the judges of that court in 1831, appears to have satisfied the Madras Government.

43. So late as 1839 the judges of the Foujdary Adawlut, for the third time, point out the circular of 1820 as laying down an uniform course of procedure, "and as furnishing a general rule for ascertaining the occasions and the degree of punishment which a master may inflict on his Hindoo customary (not a 'true') slave."

44. This rule, three times laid down by the highest judicial functionaries, recognised by the Madras government, judged to be correct, after much deliberation, unanimously by the Law Commission, has been practically applied by subordinate functionaries. Indeed, after a rule had been circulated with such deliberation and anxiety by the highest criminal court of the presidency, any deviation from it by a subordinate functionary would appear to be a breach of duty. In p. 451, No. 9 of the Appendix to the Report, a judgment is stated which was passed by a Mahomedan criminal judge in a case apparently of the same nature with that in the futwa under consideration. The case occurred in the same district, Canara; the slaves were most probably dhers, but certainly not Mahomedans, and the master was a Hindoo. The obligation on the part of the slaves to reside with their master was determined upon the simple issue, whether the fugitives were the descendants of the masters' slaves. Upon this issue it was determined that the fugitives were bound to live with the alleged master.

45. Though in Madras the cases of Hindoo slavery occur in a thousand-fold proportion to that which is found within the Bengal presidency, yet it may not be immaterial to notice in what manner the Bengal courts have considered the application of the Mahomedan criminal law to the Hindoo law of status. In a case referred by a magistrate to the Nizamut Adawlut at Calcutta (Report, pp. 184, 185), in which the point at issue was the power of a master of slaves to sell them, against their will, to another person whose intention it was to separate them by sending them to different parts of the country. The parties were respectively Hindoos. Now it is to be particularly observed, that the Nizamut Adawlut called upon their pundits for an exposition of the Hindoo law, and they furnished the magistrate with instructions for his guidance, founded upon that law, and not upon the Mahomedan law. Hence it is quite clear that the highest court of the Bengal presidency regards the Mahomedan criminal law as not changing the Hindoo law of status. This appears more pointedly from the circumstance, that in the case of Mahomedan masters the Nizamut Adawlut decides the matter according to the definition of a "true slave" by the Mahomedan law. It may be further remarked, that although it may possibly be found that in the Calcutta courts claims founded upon the Hindoo slavery have frequently been

been unsuccessful, yet if they have been decided against masters upon points of Hindoo law, such decisions are at direct variance with the late Madras futwa; and it is only necessary to look beyond the mere surface of words to be satisfied that no Bengal futwa or decision gives any countenance to the late futwa from Madras.

46. And here it is proper to remark, that the futwa under the consideration, in its definition of a "true slave" according to the Mahomedan law, differs from the interpretation given by the law officers of the Calcutta Nizamut Adawlut. The futwa admits as "true slaves" only such as have been acquired by booty in a Mahomedan war. The Calcutta law officers, not without a considerable tightening, as would appear from Mr. Sutherland's notes, of the Mahomedan law, do not restrict the definition of "true slaves" under the Mahomedan law, so as to exclude the "descendants of captives." The difference, however, between the two courts is of little practical importance, because by the Calcutta practice, which is inconsistent with the mode of proving other ancient facts both in the Indian courts in other cases, and by the courts of most civilised countries in all cases, masters are called upon to prove the fact of a capture in war by direct evidence, which of course is, in every instance, impossible.

47. But the great practical difference between the Calcutta and Madras futwas, and a most important one it is, both as regards the nature and the very great extent of its effects, comes to this: the Calcutta courts have endeavoured to abolish Mahomedan slavery, as far as this can be accomplished by a judicial decree. The Madras court, if the futwa under consideration be adopted, will in like manner attempt to abolish Hindoo slavery.

48. The futwa, moreover, appears to contain assumptions of fact which require particular observation. The futwa contains a very important allegation, that the dher and other slaves of the Madras presidency have been sold into slavery by their parents. This allegation is matter of fact, and not of opinion, unless the uniform statements of all classes of functionaries in all parts of the Madras presidency betray, as to this point, nothing but ignorance and misrepresentation, the alleged origin of Madras slavery in the futwa is most erroneous. I do not conceive that any doubt can be entertained that the great mass of Madras slaves are not free-born and purchased from their parents, but that they are the descendants of slaves, the origin of whose servitude dates long before the Mahomedan conquests, and is co-extensive with the earliest annals and traditions of the country. (*See* as to the Tamil Country, 193 *et seq.*, as to Malabar, 207 *et seq.*, Canara, 231. 234. 236, &c.)

49. Neither can there be any question that, under the Madras presidency, slaves, not being "true slaves" in the sense of the futwa, have been sold and transferred by their masters in a variety of ways generally and immemorially, and that such transactions have been confirmed by numerous decrees of courts, is placed beyond doubt by a host of incontrovertible authorities. (*See* App. 1–9.)

50. It is material to observe, that several authorities mention that the courts do not afford less protection to slaves than to free persons; whereas by the context it plainly appears, that what is meant by such expression is, that, for example, if a slave were to complain of immoderate correction by his master, the magistrate would make no difference between slave and master in ascertaining and enforcing their respective rights, not that the magistrate would hold the law made no distinction in the nature of those rights. The strongest instance of dictum in favour of the master not being justified by the relation of slavery in acts towards his slave which would not be justifiable towards freemen, is that of the magistrate of Malabar; but supposing his testimony is unequivocally to this effect, and that he may have acted insubordinately to the pointed directions of the Sudder Court of his presidency, yet it is clear such has not been the general practice of his own district. (*See* Rep. 219 to 222.) The assistant judge of Malabar (App. 450) recognises the sale, lease, mortgage, and moderate correction of slaves under the Hindoo law and custom of the country, not being "true slaves" by the Mahomedan law. The provincial court of Malabar (App. 446) states that "the right to sell, mortgage, and lease slaves according to the ancient usage of the country has never been disputed or doubted."

51. It was in this very district of Malabar that the cases arose which occasioned the circular of 1820, which is quite inconsistent with the notion that a master may not justify treatment of a slave which he could not legally use

towards a freeman. This circular, moreover, is referred to by the criminal judge of this very district, in the same Report in which that judge says that no distinction is recognised between a freeman and a slave; from which it appears that the judge was not speaking of that particular distinction which is manifestly pointed out in the circular.

52. Whatever may have been the recent practice in Malabar in the solitary instance of a particular magistrate in Canara, the district to which the futwa more particularly relates, the right of slaveowners to inflict punishment has always been admitted (App. 9, p. 441. 447; Rep. p. 242); and it appears to have been the practice (Rep. p. 238) for magistrates in Canara to restore fugitive slaves to their masters, whom they had quitted from any other cause than to escape violence or oppression. Agreeably to this practice is the order of the Mahomedan Canara judge already noticed.

53. It follows from the preceding remarks, that the futwa under consideration would seem to be inconsistent with the Mahomedan law, as declared by the Nizamut Adawlut of Bengal; inconsistent with the due application of the Mahomedan law, as declared by the Law Commissioners, and as admitted by the practice of the Bengal Nizamut Court; inconsistent with the order which has been the standing rule for the guidance of all courts and magistrates within the Madras presidency for 20 years, and which, during those 20 years, has been on several occasions expressly recognised by the Foujdary Court and by the government; inconsistent with the real facts as to the origin of Hindoo slavery within the Madras presidency, and inconsistent with the immemorial usages of the country, which government is solemnly pledged to leave inviolate; and it is to be observed, that the usages here spoken of do not relate to matters which might be obscure from their rare occurrence, but these dhers upon whose status the futwa adjudicates, amount in number from 30,000 to 50,000; and in Canara only the number of slaves, not being "true slaves" according to the definition of the Mahomedan law, is estimated at 82,000, Canara being only one of the three great slave districts of the Madras presidency.

54. Since the receipt of the recent futwa from Madras, and since the dates of the first two Minutes, an extraordinary order has been received, under date of 17th May 1841, from the very same court that gave its sanction to the futwa of 1811, which has been considered. It appears to me to be totally inconsistent with the futwa, and totally in subversion of it. The order of the Madras Sudder Court alluded to, directs the magistrate to proceed to sell churma slaves in execution of decrees according to the usages of the country. Now these churmas are obviously not "true slaves" by the Mahomedan law, and therefore, according to the terms of the futwa, cannot "be sold or transferred;" but further, under the futwa, it is the fault of the churmas themselves if they are sold; and after a sale it is again optional with them to give any effect to the sale or not; for if they go away when and where they please, Government has prohibited its own officers from restoring slaves to their masters; an action in the civil court is practically and perhaps theoretically of no use, and according to the futwa, the churma, not being a Mahomedan "true slave," it would be a criminal offence in his alleged master (according to the Mahomedan law, which the futwa and the court pronounce applicable) to use any force whatever for the purpose of preventing him from running away, or for that of bringing him back.

55. It is very singular that, with reference to the last-mentioned order, the Sudder Court refers to their letter, addressed to the Law Commission under date of 10th September 1836, and give us a copy of that communication. Now, in this communication it is expressly stated that in the civil courts "the law recognised in Malabar is that of the country, which, though founded on the Hindoo law, is appealed to both by Hindoos and Mahomedans, and regulates all questions of property, whether real, personal, or in slaves." And again, "Hindoos in this district possess no other description of slaves but such as have been born from parents who are slaves of caste, and these the Mahomedan law would recognise to be in a state of slavery, and the three conditions under which persons become slaves among Mahomedans are common to the Hindoo caste." It is obvious that the matter of fact as to the origin of Hindoo slavery, as here stated, is quite contrary to the origin assigned in the futwa; viz. "And as regards the slaves of this country, whether they are of dher or paria caste, or of any other caste, the people receive them from their parents either during famine or at other times."

times." Moreover, the existence of legal slaves under the ancient laws and usages of the country, and the recognition of such slaves by the Mahomedan law, is in this document distinctly admitted.

(signed) *A. Amos.*

MINUTE by the Right honourable the Governor-general of *India* in Council; dated the 27th August 1841.

Legis. Cons. 6 Sept. 1841. No. 16.

Slavery.

I DO not find it necessary to write at length upon the Minutes which have been recorded in Council on the subject of the abolition of slavery, but I would yet say a few words in explanation of the views which I expressed in my former paper, and to which I still generally adhere.

2. The whole scope of my views upon this question has been, that it would be best to allow sound principles of administration gradually to extend themselves, as they have, in fact, been already very widely extended, without the direct interference of government; but that, should the authorities in England consider legislation to be proper, it should be confined to the declaration of such rules as I consider the evidence to have established to be nearly universally prevalent, namely, that magistrates shall not interfere for the return of persons claimed as slaves to masters, and that they shall admit no distinctions, in cases brought before them, founded on the relation between master and slave.

3. Mr. Amos is of opinion that magistrates do not now interfere for the return of persons claimed as slaves; but he believes that a power of moderate coercion and restraint is admitted in masters to a much greater degree than I had collected from the evidence to be the case at this time.

4. In support of my own impression upon this point of difference, I can only refer to the mass of evidence, as set forth by the Law Commissioners, which I have examined with great care; but even were the admission of a power in the masters, which Mr. Amos appears to affirm to be not of the very local and partial kind which I suppose it to be, it is yet unquestionable that, throughout extensive provinces, no such admission on the part of our judicial tribunals can be alleged; and it certainly seems to me, that to speak generally of the legal admission of any power of punishment in the master as a mere "continuance of an existing power, would be to give a very incorrect representation of the fact," as I believe it both really to be and as it stands upon the evidence; and if I am right in this, the necessity of extreme caution in legislation becomes the more manifest; for surely, if we legislate at all, we can only legislate in favour of the slave; we cannot in any quarter curtail or recall a protection to the slave which we find to be established by recognised judicial practice.

5. I must repeat my former opinion, that with our very imperfect police and remotely scattered magistrates, it would not be safe to commit a power of punishment to masters; and I would add that a power which does not extend beyond that of such moderate coercion as that which Mr. Amos would not acknowledge, can in truth be of very little value. Servants and labourers are easily controlled, without the possession of such authority by their employers, and so doubtless would those classes who are in this country comprehended under the designation of slaves.

6. Supposing legislation to be directed from England, I would for the present confine it strictly to such a declaration as shall give certainty and uniformity to the administration of the law, which I believe to be most generally, though not quite invariably, enforced. If by this means the process of the entire extinction of a slavery recognised by our laws shall be accelerated, it must, I feel, be to all of us a subject of sincere congratulation; but beyond the declaration of (which is already in practice) the law generally, I do not think it wise or necessary that the government should yet proceed. It is well that in great objects of this nature the course of the government should be measured and progressive, although so guided as never to counter-work the end at which we aim; we may otherwise incur a serious hazard of raising very mistaken apprehensions, and fostering wholly unfounded claims. No just claim for compensation could, for instance, be made by masters, simply because the state of our criminal law is made clear and certain; although this might not unnaturally work upon themselves as grievously injured, if they were to be suddenly told that our courts would no longer

(C.) No. I.
Papers on Slavery in India.

recognise even the name of slavery. When the really slight and valueless nature of their tenure over their so called slaves becomes perfectly understood by masters and by all public officers in all parts of India, the open extinction of slavery as a status in any manner admitted by our laws may be expected to be received without discontent and resistance.

(signed) *Auckland.*

(C.) No. II.
Examination of Absent Witnesses.

— (C.) No. II. —

ON THE EXAMINATION OF ABSENT WITNESSES.

(No. 5.)

Legis. Cons. 22 Feb. 1841. No. 2.

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *T. H. Maddock*, Esq. Secretary to the Government of India, Legislative Department.

Sir,

Judicial Depart.

I AM directed by the Right honourable the Governor of Bengal to request that you will submit for the consideration and orders of the Supreme Government the accompanying correspondence*, which has reference to the subject of Act XXIII. of the current year.

2. You will be good enough to return the documents now submitted.

I have, &c.
(signed) *F. J. Halliday,*
Secretary to the Government of Bengal.

Fort William,
29 December 1840.

(No 616.)

Legis. Cons. 22 Feb. 1841. No. 3. Enclosure.

From *D. M'Farlan*, Esq. Chief Magistrate, Calcutta, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal.

Sir,

IN continuation of my letters of 3d May 1838, 23d November 1839, and 24th August 1840, on the subject of process that passes between the Calcutta police-office and the mofussil courts, I have now the honour to transmit two statements, with the view, first, of informing government of the ordinary course of affairs, and, second, of a remedy which may be provided if government think fit.

2. There are, in addition to these, frequent anomalous cases of the taking of evidence before me in criminal cases hanging in the mofussil.

3. A mofussil court caused me to take the evidence of the secretary to the Bank of Bengal, to prove a forgery of a note of that bank.

4. I take frequent evidence in civil cases. The most curious is that of a warrant from the Supreme Court of the Commonwealth of Massachussets. The gentlemen whom I have examined are above suspicion, but if they have perjured themselves I do not know who could punish them.

5. A suit for petty assault is generally criminal, and involves a forfeiture of 10 rupees. A suit for the inheritance of the Burdwan Raj is civil, and involves the loss or gain of 50 lacs of rupees per annum; any distinction in the propriety of taking evidence in the one case or the other, founded on the technical definition of civil and criminal, seems needless.

I have, &c.
(signed) *D. M'Farlan,*
Chief Magistrate.

Calcutta Police-office,
26 October 1840.

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* Criminal Proceedings, 15th December 1840, Nos. 20 and 24.
Letter from Register Sudder Dewanny Adawlut, No. 4281, of the 18th instant.

(C.) No. II.
Examination of Absent Witnesses.

STATEMENT of the Number of Notices, Proclamations, Summonses, Subpœnas, Dustuk or Warrants of the Dewanny and Foujdary Adawluts, sent by the hands of Peons from the Mofussil into the Town, commencing the 1st of January and ending on the 31st of August last.

1840.	Ittallanamahs, or Notifications of the Zillah Civil Courts.	Hookumnamahs, or Orders of the Zillah Civil Courts.	Subpœnas.	Dustuk, or Warrants of Sums decreed in the Zillah Civil Courts.	Ishtehar, or Proclamations of the Zillah Civil Courts.	Summonses and Subpœnas from the Zillah Foujdary Adawlut.	Total.
January	21	4	13	-	4	12	54
February	25	3	15	-	5	4	52
March	8	-	5	1	2	8	24
April	20	-	20	5	7	6	58
May	20	3	12	4	5	4	48
June	30	-	13	6	9	1	59
July	23	-	18	4	5	13	63
August	28	-	7	1	7	10	53
	175	10	103	21	44	58	411
					Average per Month		51

Calcutta Police-office, 26 Oct. 1840.

(signed) *D. M'Farlan*, Chief Magistrate.

STATEMENT of the Number of Roobacarries and Perwannahs or Warrants for Apprehension of accused Persons sent from the Interior by Dawk into *Calcutta*, and the Number of Sundry Civil Processes, commencing from the 1st of January and ending on the 31st August last.

1840.	Roobacarries from the Zillah Foujdary Adawlut for Apprehension of accused Parties, sent by Dawk.	Roobacarries from the Superintendents of the Camp of Barrackpore and Dum Dum, for the Attendance of Accused Parties, by Dawk.	Roobacarries from the Collector's Cutcherry regarding Defalcations, by Dawk.	Miscellaneous Roobacarries and Perwannahs of the Foujdary Adawlut, to make Inquiries in the Town of Calcutta, in cases pending in the Mofussil, to examine Securities tendered in the Mofussil, and to collect Fines imposed, by Dawk.	Roobacarries from Zillah Civil Suits, forwarding Questions to be put to Witnesses in Calcutta, by Dawk.	Total.
January	10	1	1	7	6	25
February	10	2	2	25	2	41
March	7	-	-	14	-	21
April	5	-	-	10	5	20
May	10	-	-	12	4	26
June	8	-	-	23	5	36
July	7	-	1	16	8	32
August	10	-	-	10	3	23
	67	3	4	117	33	224
				Average per Month		28

Calcutta Police-office, 26 Oct. 1840.

(signed) *D. M'Farlan*, Chief Magistrate.

(C.) No. II.
Examination of Absent Witnesses.

(No. 623.)

From *D. M'Farlan*, Esq. Chief Magistrate, Calcutta, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal.

Sir,

I FIND, on closer examination, that the criminal cases in which evidence has been taken by me for the mofussil court (by commission, as it may be called), amount from January to August last to eight, an abstract of which is inserted below. They were not included in the statements transmitted with my letter No. 616, of the 26 October last. They are all for the defence.

ZILLAH REQUIRING EVIDENCE.	KIND OF EVIDENCE.
1/ Midnapore - -	Proof that certain property was honestly come by in Calcutta.
2/ ditto - - -	Evidence of medical treatment in Calcutta.
3/ ditto - - -	- - (Goomsoodee) or disappearance in the mofussil; proof that the party was in Calcutta.
4/ ditto - - -	Ditto - of another party.
5/ Poorneah - -	Proof that defendant was in Calcutta at a given time.
6/ Furreedpore - -	Ditto - was in Calcutta during the time of an affray at the Zillah.
7/ Sarun - - -	- - Proof that a man was in the police of Calcutta during the time of an affray.
8/ Serampore - -	Evidence of a witness to the searching of a house.

Calcutta Police-office, 2 Nov. 1840.

I have, &c.
(signed) *D. M'Farlan*,
Chief Magistrate.

(No. 1720.)

From *J. H. Young*, Esq. Deputy Secretary to the Government of Bengal, to the Register Sudder Dewanny and Nizamut Adawlut.

Sir,

Judicial: Criminal. No. 616 of the 26th October. No. 623 of the 2d November.

I AM directed by the Right honourable the Governor of Bengal to request that you will lay before the Court the two accompanying original letters from the chief magistrate of Calcutta, regarding requisitions made to him by mofussil authorities for execution of legal processes within the jurisdiction of Her Majesty's Court, with a request on the part of his Lordship that measures may be adopted for the correction of such irregularities as those mentioned by the chief magistrate

2. You will be pleased to return the papers now forwarded.

I am, &c.
(signed) *J. H. Young*,
Deputy Secretary to the Government of Bengal.

Fort William, 10 November 1840.

(No. 4281.)

From *J. Hawkins*, Esq. Register, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, in the Judicial Department.

Sir,

Sudder Dewanny Adawlut. Present: R. H. Rattray, C. Tucker, E. Lee Warner, and D. C. Smith, Esqrs., Judges. J. F. M. Reed, Esq., Temporary Judge.

WITH reference to Mr. Deputy Secretary Young's letter of the 10th November last, No. 1720, and its enclosures, I am directed by the Court to forward you, for the purpose of being laid before the Right honourable the Governor of Bengal, copy of a circular order this day issued to the mofussil authorities, prohibiting the irregularities alluded to in the communications received from the chief magistrate of Calcutta.

2. The Court, however, are clearly of opinion, with reference to the heavy expenses that will be imposed on parties in conveying their witnesses from the presidency to the different courts situated in the interior, as well as to the hardship that must be undergone by witnesses in being obliged to leave their avocations in

Calcutta

(C.) No. II.
Examination of Absent Witnesses.

Calcutta and to proceed at all seasons of the year to any part of these territories, that the provisions of

Section 6, Regulation IV. 1793;
Section 9, Regulation XIII. 1808;
Section 11, Regulation XXVI. 1814; and
Section 11, Regulation XIX. 1817,

should be extended to all persons residing in Calcutta, whose evidence may be required in any of the Company's courts, so that the chief magistrate of Calcutta, or some other duly qualified officers, should be authorized to examine such witnesses on written interrogatories, as appears heretofore to have been the practice.

I have, &c.
(signed) *J. Hawkins*,
Register.

Fort William,
18 December 1840.

(Copy.—Circular.)

To the Civil and Session Judges.

S. D. & N. A.

Sirs,

Present: R. H. Rattray, C. Tucker, E. Lee Warner, D. C. Smith, Esqrs., Judges; and J. F. M. Reed, Esq., Temporary Judge.

The Right honourable the Governor of Bengal has lately forwarded to the Court two original letters from the chief magistrate of Calcutta, regarding certain irregular requisitions made by the mofussil authorities to that officer, for the purpose of obtaining the evidence of witnesses residing in Calcutta, in cases that appear to have been pending in the Company's courts.

2. Section 4, Act XXIII. of 1840, indicates the manner in which subpœnas issued by the mofussil authorities may now be executed within the local limits of Her Majesty's courts, and you are therefore directed to refrain from sending any requisitions to the chief magistrate of Calcutta, in any civil or criminal proceedings, for the purpose of obtaining the evidence of witnesses residing in Calcutta.

3. The Court request that you will be careful that every subpœna, writ, warrant, or other process required to be endorsed under the authority of this Act, be drawn up in strict conformity with the Regulations of Government, in order that the same may not be remitted to you for amendment.

4. You will furnish the magistrate with a copy of this letter, and you will communicate the contents to the principal sudder ameen, and sudder ameen of your district.

I have, &c.
J. Hawkins, Register.

(True copy.)
(signed) *J. Hawkins*, Register.

Minute by the Honourable *A. Amos*, Esq., dated 9 February 1841.

Legis. Cons. 22 Feb. 1841, No. 4.

I circulate a draft Act for the examination of absent witnesses, in consequence principally of the suggestion of the Sudder Court that such an Act is necessary, and finding also that it is wanted for the supreme courts.

The suggestion of the Sudder Court applied only to the taking of examinations in the presidency towns for the use of the mofussil courts; but on conference with one of the judges of the Sudder, it appeared to him that the recent provisions of the English statute law contained several material improvements on the Bengal Regulations. It appears to me that if this draft should be favourably received after publication, it will be a considerable and important step towards a uniform and improved code of procedure for all the courts in all the presidencies. Sir E. Ryan, Sir H. Seton, and Mr. Smyth of the Sudder, think the present draft satisfactory.

Among the alterations of the present system, it may be noticed that the examinations which will be taken in the supreme courts are now only procurable by a bill in equity, and that the procuring of evidence in the states of allied princes has long been a desideratum which has been much felt in courts of justice.

As this Act will fill an important place in any code of procedure, it might be useful, and I think it would be agreeable to the Law Commissioners, if the printed published draft were sent to them, together with an intimation that if any

(C.) No. II.
Examination of Absent Witnesses.

modifications or additions should occur to them within the three months, Government hope to be favoured with their suggestions, but that otherwise Government does not wish to divert their attention from other matters to preparing any special report on this subject.

(signed) *A. Amos.*

AN ACT for a more uniform and an improved Process for taking the Examination of Absent Witnesses.

Legis. Cons. 22 Feb. 1841. No. 5. Enclosure.

1. IT is hereby enacted that all Regulations, and parts of Regulations, for taking the examinations of absent witnesses in any presidency are hereby repealed.

2. And it is hereby enacted, that it shall be lawful for any court within the territories under the government of the East India Company, and the several judges thereof, in every suit depending in such court, upon the application of any of the parties to such suit, to order the examination upon interrogatories or otherwise, before any officer of any such court, or other person or persons named in such order, of any witnesses within the jurisdiction of the court where the suit shall be depending, or to order a commission to issue for the examination of witnesses at any place or places out of such jurisdiction upon interrogatories or otherwise, and by the same or any subsequent order or orders, to give all such directions touching time, place, and manner of such examination, as well within the jurisdiction of the court wherein the suit shall be depending as without, and all other matters and circumstances connected with such examinations, as may appear reasonable and just.

3. And it is hereby enacted, that when any order shall be made for the examination of witnesses within the jurisdiction of the court wherein the suit shall be depending, by the authority of this Act, it shall be lawful for the Court, or any judge thereof, in and by the first order to be made in the matter, or any subsequent order, to command the attendance of any person to be named in such order, and to direct the attendance of any such person to be at his own place of residence, or elsewhere, if necessary or convenient so to do, and to produce all necessary documents and papers, and the wilful disobedience to any such order shall be deemed a contempt of court; provided always, that every person whose attendance shall be so required shall be entitled to the like payment for expenses and loss of time as upon attendance at a trial.

4. And it is hereby enacted, that it shall be lawful for all and every person authorized to take the examination of witnesses by any order or commission issued in pursuance of this Act, and he and they are hereby authorized and required to take all such examinations upon oath or affirmation, where an affirmation is admissible or required upon a trial; and if upon such oath or affirmation any person making the same shall wilfully and corruptly give any false evidence, every person so offending shall be deemed and taken to be guilty of perjury.

5. And it is hereby enacted that no examination or deposition to be taken by virtue of this Act shall be read in evidence at any trial without the consent of the party against whom the same may be offered, unless it shall appear to the satisfaction of the court that the examinant or deponent is beyond the jurisdiction of the court, or dead, or unable from permanent sickness or other permanent infirmity to attend the trial, or distant without collusion more than 50 coss from the place of trial, or is exempted by any law or Regulation from personal appearance in court, in all or any of which cases the examinations and depositions, duly certified, may at the discretion of the court, without proof of the signature to such certificate, be received and read in evidence.

6. And it is hereby enacted, that any court other than one of Her Majesty's courts, or any judge thereof, may issue such commission as aforesaid, and such orders as are indicated in the second section of this Act, to be executed within the local limits of the jurisdiction of any of Her Majesty's courts, and every such commission required to be so executed, and all orders made touching the same shall, before being executed, be submitted to a judge of that court of Her Majesty within local limits of which it is intended that the commission shall be executed, and it shall be lawful for such judge of Her Majesty's court to subscribe at his discretion any such commission or order, after which the wilful disobedience to any such order shall be deemed a contempt of Her Majesty's court.

7. And

(C.) No. II.
Examination of Absent Witnesses.

7. And it is hereby enacted, that such commissions and orders as aforesaid may be issued for execution under this Act, within the territories of princes and states in alliance with the East India Company, and all persons within such last mentioned territories, being in the service of the East India Company, are hereby required to pay obedience thereto, and for disobedience thereof shall, on being found within the jurisdiction of the court or judge issuing any such commission or order, be punishable in like manner as if such offence had been committed within such jurisdiction, and for giving false testimony under the same shall be punishable by any court of justice within the territories of the East India Company.

8. And it is hereby enacted, that whenever the evidence of any absent witness shall be required for the purposes of any of the Honourable Company's courts, the commission for examining such witness may be directed to any judge of any other of such courts, who may be required to take such examination in open court or otherwise, and in every such case the judge to whom any such commission shall be directed, shall be authorized to punish as for a contempt of court the neglect or refusal of any witness to obey the order for the examination required by such commission.

Fort William, Legislative Department, dated 22 February 1841.

Legis. Cons. 22 Feb. 1841. No. 6.

The following Draft of a proposed Act was read in Council for the first time on the 22d February 1841.

ACT No. —— of 1841.

An Act for a more uniform and an improved Process for taking the Examination of Absent Witnesses.

I. It is hereby enacted, that all Regulations and parts of Regulations for taking the examinations of absent witnesses in any presidency are hereby repealed.

II. And it is hereby enacted, that it shall be lawful for any court within the territories under the government of the East India Company and the several judges thereof, in every suit, depending in such court, upon the application of any of the parties to such suit, to order the examination upon interrogatories or otherwise before any officer of any such court or other person or persons named in such order, of any witnesses within the jurisdiction of the court where the suit shall be depending, or to order a commission to issue for the examination of witnesses at any place or places out of such jurisdiction, upon interrogatories or otherwise, and by the same or any subsequent order or orders to give all such directions touching time, place and manner of such examination, as well within the jurisdiction of the court wherein the suit shall be depending as without, and all other matters and circumstances connected with such examinations as may appear reasonable and just.

III. And it is hereby enacted, that when any order shall be made for the examination of witnesses within the jurisdiction of the court wherein the suit shall be depending, by the authority of this Act, it shall be lawful for the court or any judge thereof in and by the first order to be made in the matter, or any subsequent order, to command the attendance of any person to be named in such order, and to direct the attendance of any such person to be at his own place of residence or elsewhere, if necessary or convenient so to do, and to produce all necessary documents and papers, and the wilful disobedience to any such order shall be deemed a contempt of court: provided always, that every person whose attendance shall be so required shall be entitled to the like payment for expenses and loss of time as upon attendance at a trial.

IV. And it is hereby enacted, that it shall be lawful for all and every person authorised to take the examination of witnesses by any order or commission issued in pursuance of this Act, and he and they are hereby authorized and required to take all such examinations upon oath or affirmation where an affirmation is admissible or required upon a trial, and if upon such oath or affirmation any person making the same shall wilfully and corruptly give any false evidence, every person so offending shall be deemed and taken to be guilty of perjury.

V. And it is hereby enacted, that no examination or deposition to be taken by virtue of this Act shall be read in evidence at any trial without the consent of the party against whom the same may be offered, unless it shall appear to the satis-

(C.) No. II.
Examination of Absent Witnesses.

faction of the court that the examinant or deponent is beyond the jurisdiction of the court, or dead, or unable from permanent sickness or other permanent infirmity to attend the trial, or distant without collusion more than 50 coss from the place of trial, or is exempted by any law or Regulation from personal appearance in court, in all or any of which cases the examinations and depositions duly certified may, at the discretion of the court, without proof of the signature to such certificate, be received and read in evidence.

VI. And it is hereby enacted, that any court other than one of Her Majesty's courts, or any judge thereof, may issue commission as aforesaid and such orders as are indicated in the second section of this Act, to be executed within the local limits of the jurisdiction of any of Her Majesty's courts, and every such commission required to be so executed, and all orders made touching the same shall, before being executed, be submitted to a judge of that court of Her Majesty within the local limits of which it is intended that the commission shall be executed, and it shall be lawful for such judge of Her Majesty's court to subscribe, at his discretion, any such commission or order, after which the wilful disobedience to any such commission or order shall be deemed a contempt of Her Majesty's court.

VII. And it is hereby enacted, that such commissions and orders as aforesaid may be issued for execution under this Act within the territories of princes and states in alliance with the East India Company, and all persons within such last-mentioned territories, being in the service of the East India Company, are hereby required to pay obedience thereto, and for disobedience thereof shall, on being found within the jurisdiction of the court or judge issuing any such commission or order, be punishable in like manner as if such offence had been committed within such jurisdiction, and for giving false testimony under the same shall be punishable by any court of justice within the territories of the East India Company.

VIII. And it is hereby enacted, that whenever the evidence of any absent witness shall be required for the purposes of any of the Honourable Company's courts, the commission for examining such witness may be directed to any judge of any other of such courts, who may be required to take such examination in open court or otherwise. And in every such case the judge to whom any such commission shall be directed shall be authorised to punish as for a contempt of court the neglect or refusal of any witness to obey the order for the examination required by such commission.

Ordered, that the draft now read be published for general information.

Ordered, that the said draft be reconsidered at the first meeting of the Legislative Council of India after the 22d day of May next.

T. H. Maddock,
Secretary to Government of India.

(No. 27.)

Legis. Cons. 22 February 1841. No. 7.

From *T. H. Maddock*, Esq. Secretary to the Government of India, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal.

Legislative.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 5, dated the 29th December last, with its enclosures, and in reply to transmit to you, for submission to the Right honourable the Governor of Bengal, the accompanying draft of a proposed Act for a more uniform and improved process for taking the examination of absent witnesses founded, thereon.

2. The original enclosures of your letter are returned herewith.

I have, &c.

Council Chamber,
22 February 1841.

(signed) *T. H. Maddock,*
Secretary to the Government of India.

(C.) No. II.
Examination of Absent Witnesses.

(No. 28.)

From *T. H. Maddock*, Esq. Secretary to the Government of India, to *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission.

Legis. Cons. 22 February 1841. No. 8. Legislative.

Sir,

In transmitting to you, for submission to the Indian Law Commissioners, the accompanying copy of a proposed draft Act for a more uniform and improved process for taking the examination of absent witnesses, I am directed by the Governor-general in Council to request, that if in respect to it any modifications or additions should occur to the Commissioners, they may be communicated to me for the information of the Supreme Government before the expiration of the three months, after which the draft is ordered for reconsideration.

2. The papers upon which the draft Act is founded are also enclosed for the information of the Commissioners.

I have, &c.
(signed) *T. H. Maddock*,
Secretary to the Government of India.

Council Chamber,
22 February 1841.

To the Honourable President and Members of the Legislative Council of India.

Legis. Cons. 17 May 1841. No. 26.

The Memorial of the undersigned Inhabitants of the Districts of Vizagapatam, Rajahmundry, &c.

Respectfully showeth,

That your memorialists have observed the draft of an Act published under date the 22d February 1841, entitled, "An Act for a more uniform and an improved Process for taking the Examination of 'Absent Witnesses;'" and having duly considered the object and motive of your Council in framing the said Act, respectfully beg to offer a few observations for its more efficient operation.

That the Act under the consideration of your memorialists, among other things, provides in certain cases against the present practice of compelling the witnesses of all ranks (females of distinction excepted) to give their evidences in open courts, a practice materially affecting the convenience and pecuniary considerations of such of the British Indian subjects as are obliged by the extent of their avocations to be constantly engaged with their own concerns.

That your memorialists believe that section 2 of this Act, which authorises a judge to examine witnesses by interrogatories or otherwise, was intended to be availed of by that portion of the witnesses whose rank in society, and necessarily the importance of their employment, might render it inconvenient and troublesome to appear in open court.

That under this conviction, your memorialists beg leave to observe, that this Act, under its present form, leaves the disposal of this privilege at the discretion of the judge, and therefore liable to deviate in point of utility from the intent of your Council for the following reasons:

1st. This privilege cannot be enjoyed by the party it was intended for, unless the judge with whom the power of its disposal is vested happens to be rigidly equitable, so that his private feeling may have no influence whatever over his public career.

2d. As it is not in the power of every judge to be thoroughly acquainted with the several distinctions of the Hindoos, he is necessarily obliged to rely on the statement of his informants, who may themselves be misled or influenced by other motives to misrepresent the facts of the case. In all and every such cases this privilege is liable to be ill bestowed, and even abused. The truth of this statement shall be established on a reference to the enclosed document.

That your memorialists, under these considerations, humbly beg to suggest the propriety of introducing a provision to guard against the above defect, which can, in their humble opinion, be effected by adopting a method similar to that pursued in selecting the grand juries at the three presidencies, or that of bestowing

(C.) No. II.
Examination of Absent Witnesses.

the title of esquire in England, in defining that class of persons who are eligible to avail themselves of the benefits of this Act.

Your memorialists respectfully solicit that your Council will be pleased to amend the Act, so as to leave little grounds for the perversion of the import of this desirable enactment.

And your memorialists will ever pray.

(signed) *Goday Soorai Narrain Row,*
Proprietor of the Estates Sharoomahamed Poorum Boopuly Razanaram and Nackapelly, in the Vizagapatam District.

20 April 1841.

Legis. Cons. 17 May 1841. No. 27. Enclosure.

EXTRACT from the Proceedings of the Provincial Court of Appeal for the Northern Division, dated 16 April 1832.

(E. P. No. 169 of 1832.)

Goday Sooreeannarainrydoo Petitioner.

READ Extra Petition, No. 169 of 1832, from the pleader C. Boochiah, on behalf of Goday Sooreeannarainroydoo, complaining that the acting zillah judge of Chicacol refused to allow him to sit on a chair during his examination before that court as a witness for the plaintiff in O. S. No. 11, of 1827, of this court's file, although he was informed by the government vakeel that a chair was always allowed him by the former zillah judges whenever the petitioner had to appear before the court, in consideration of his being a proprietor, a soucar, and of high respectability, and praying that a precept may be issued to the zillah judge of Chicacole, in the event of his attendance being required hereafter before the court, to allow him a chair, and to receive his evidence sitting, and also that certified copies of this petition, and of the proceedings thereon, may be granted to him on stamped papers which will be furnished by him.

Ordered, that a copy of the petition be sent to the zillah judge of Chicacole, and that he be informed that the usual practice in the court of Chicacole of giving a chair to zemindars, respectable ratchawars, and proprietors when giving their evidence, seems consistent with the orders of Government, dated 23d February 1827, and that it should not be deviated from in the case of Narrainrow, who is a very extensive proprietor, and who, it is understood, has hitherto been allowed the indulgence which he has solicited. Precept returnable within five days after its receipt.

Ordered, that the copies prayed for be granted.

(True extract.)

(signed) *D. Bannerman,*
Acting Judge for the Regr.

Legis. Cons. 14 June 1841. No. 4.

From the Indian Law Commissioners to the Right Honourable *George*, Earl of *Auckland*, G. C. B., Governor-general of India in Council.

WE have now the honour to report upon the draft of a proposed Act for a more uniform and an improved process for taking the examination of absent witnesses, in compliance with the requisition made to us by Mr. Secretary Maddock's letter of the 22d February last, No. 28.

2d. The branch of procedure to which this draft relates is one that has undergone much discussion in the Commission, with a view to the code now in preparation, and we have agreed upon the general principles on which that part of the code is to be constructed.

3d. We have now the honour to send up the draft Act, with such modifications and additions as were necessary to bring it into accordance with the general principles so agreed upon.

4th. In

(C.) No. II.
Examination of Absent Witnesses.

4th. In submitting this modified draft, we beg leave to recall to the attention of your Lordship in Council the letter addressed by our secretary, on the 18th May 1838, to Mr. Officiating Secretary Mangles, in which this subject was considered. We submit this our report for the consideration of your Lordship in Council.

(signed) *A. Amos.* *F. Millett.*
C. H. Cameron. *D. Eliott.*
H. Borradaile.

Indian Law Commission,
22 May 1841.

Act No. —— of 1841.

An Act for a more uniform and an improved Process for taking the Examination of Absent Witnesses.

Legis. Cons. 14 June 1841. No. 5. Enclosure.

1. It is hereby enacted, that all Regulations and parts of Regulations for taking the examination of absent witnesses in any presidency are hereby repealed.

2. And it is hereby enacted, that it shall be lawful for any court within the territories under the government of the East India Company, and the several judges thereof, in every civil proceeding depending in such court, upon the application of any of the parties to such proceeding, to order the examination, upon interrogatories or otherwise, before any officer of any such court, or other person or persons named in such order, of any witnesses within the jurisdiction of the court where the proceeding shall be depending, or to order a commission to issue to any subordinate court for the examination of such witnesses upon interrogatories or otherwise, or to order a commission to issue to any other court for the examination of witnesses at any place or places out of such jurisdiction, upon interrogatories or otherwise, and by the same or any subsequent order or orders, to give all such directions for taking such examinations, as well within the jurisdiction of the court wherein the proceeding shall be depending as without, as may appear reasonable and just; provided always, that any court to whom any such commission shall be directed, shall take the examination in open court in all cases where witnesses are able to attend in court, and are not exempted from attendance by law absolutely, or at the discretion of the court; provided also, that such commissions as aforesaid, for the examination of witnesses out of such jurisdiction, may be directed otherwise than to some court under special circumstances which may appear to the court issuing the commission to render such special direction expedient; provided also, that all commissions issued and orders made by any court of the East India Company, and which are required to be executed within the local limits of any of Her Majesty's supreme courts, shall be directed in manner hereinafter mentioned.

3. And it is hereby enacted, that when any order shall be made for the examination of witnesses within the jurisdiction of the court wherein any such proceeding as aforesaid shall be depending, by the authority of this Act, it shall be lawful for the court, or any judge thereof, in and by the first order to be made in the matter, or any subsequent order, to command the attendance of any person to be named in such order, and to direct the attendance of any such person to be at his own place of residence, or elsewhere, if necessary or convenient so to do, and to produce all necessary documents and papers, and the wilful disobedience to any such order shall be deemed a contempt of court, and punishable as in other cases of refusing or neglecting to give testimony; provided always, that every person whose attendance shall be required under this Act, shall be entitled to the like payment for expenses and loss of time as upon attendance in court in cases where such expenses are now allowed.

4. And it is hereby enacted, that it shall be lawful for every court or person authorised to take the examination of witnesses by any order or commission issued in pursuance of this Act, and they are hereby authorised and required to take all such examinations upon oath or affirmation, where an affirmation is admissible or required upon a trial; and if upon such oath or affirmation, any person making the same shall wilfully and corruptly give any false evidence, every person so offending shall be deemed and taken to be guilty of perjury, and every person causing or procuring another person to commit the offence of perjury hereby defined shall be guilty of subornation of perjury.

(C.) No. II. Examination of Absent Witnesses.

5. And it is hereby enacted, that, before any order or commission for the examination of any witness under this Act shall be issued, the court or judge issuing the same shall be satisfied that there is good reason for believing that the witness will be unable to attend at the usual time for examination by reason of absence from the jurisdiction, sickness, or other cause allowed by law (A. A.), and no deposition taken under this Act, except as hereinafter-mentioned, shall be read in evidence without the consent of the party against whom the same may be offered, unless it be proved that the deponent is beyond the jurisdiction of the court, or dead, or unable from sickness or infirmity to attend to be personally examined, or distant without collusion more than 50 coss from the place where the court is held, or exempted by law absolutely, or at the discretion of the court, from personal appearance in court, or unless the court shall at its discretion dispense with the proof of any of the above circumstances, or shall authorize the deposition of any witness being read in evidence, notwithstanding proof that the causes for taking such deposition have ceased at the time of reading the same, and after the witness shall be produced, and shall have delivered his testimony, it shall be lawful for the court at its discretion to authorise the reading of the deposition; and all depositions taken under this Act, being duly certified, may be read at the discretion of the court without proof of the signature to such certificate.

6. And it is hereby enacted, that any court, other than one of Her Majesty's courts, or any judge thereof, may issue such commissions as aforesaid, and such orders as are indicated in the second and third sections of this Act, to be executed within the local limits of the jurisdiction of any of Her Majesty's courts; and all such commissions and orders, except when directed otherwise than to a court, shall be directed to a court of requests having jurisdiction within such limits or any part thereof.

7. And it is hereby enacted, that such commissions and orders as aforesaid may be issued for execution under this Act within the territories of princes and states in alliance with the East India Company, and all persons within such last-mentioned territories, being in the service of the East India Company, are hereby required to pay obedience thereto, and for disobedience thereof shall, on being found within the jurisdiction of the court or judge issuing any such commission or order, be punishable in like manner as if such offence had been committed within such jurisdiction, and for giving false testimony under the same shall be punishable by any court of justice within the territories of the East India Company.

8. And it is hereby enacted, that whenever the evidence of any absent witness shall be required out of the jurisdiction of the court in which the proceedings for which the evidence is wanted may be pending, and the commission shall be directed to any court, such court may punish the wilful disobedience of any such order as aforesaid as a contempt, notwithstanding it shall not itself have made such order, with the same amount of punishment as in other cases of refusing or neglecting to give testimony.

9. And it is hereby enacted, that such orders and commissions as aforesaid may be issued, executed, and enforced in manner aforesaid, in any criminal proceeding pending in any court; provided always, that no deposition taken under this Act in the course of any criminal proceeding shall be read in evidence, unless taken in open court, except depositions of witnesses exempted by law absolutely, or at the discretion of the court, from personal appearance in court in criminal cases, or unable to attend in court from sickness or infirmity, and that no deposition of any accomplice shall be read in evidence under this Act; provided also, that no capital sentence shall be passed in any case in which the conviction of the accused depends in any degree upon the evidence contained in a deposition taken and read in evidence under this Act; provided also, that under no circumstances, except as hereinafter mentioned, shall any deposition taken under this Act be read in evidence in any criminal proceeding, unless it be proved that the deponent is dead, or is unable from permanent sickness or infirmity to attend to be personally examined, or distant more than 50 coss from the place where the court is held, or exempted by law absolutely, or at the discretion of the court, from personal appearance in court in criminal cases: and whenever a deposition shall be taken under this Act, and the witness shall afterwards be personally examined in court, the deposition shall be read in evidence after the witness shall be so examined.

(C.) No. II.
Examination of Absent Witnesses.

Legis. Cons. 14 June 1841. No. 6. Absent Witness Act.

MINUTE by the Honourable *A. Amos*, Esq., dated 8 June 1841.

Two suggestions were reserved for consideration at our last meeting. 1st. That although it was the intention of the Act that commissions should be always directed to the court nearest to which the witness resided; yet that, in the working of the Act, the commission would, in point of fact, generally be sent to the judge, and not to a moonsiff, although the judge might be distant from the witness, and the moonsiff very near to him. 2dly. That no superior tribunal should take evidence for an inferior tribunal, a principle which the Act itself adopts with regard to the supreme courts, which are not to take evidence for mofussil courts, but the courts of request are to do this business in the presidency towns.

It was the opinion of the Law Commission, that the courts requiring evidence should not be tied down to direct their commissions to any particular courts, for that their discretion in this respect would be exercised with the greatest regard to propriety and convenience in each case, if it were guided by the instructions of the respective sudder courts, instructions which, to be of practical utility, might lead to some prolixity of detail.

As a general rule, it may be proper that the evidence wanted for a court ought to be taken before a court of an equal or inferior degree, but I think that this principle may admit of some qualification. For example, it may happen where a suit is before a moonsiff, that it will be very convenient that a sudder ameen should take the evidence; and where it is before a sudder ameen, that a principal sudder ameen should take the evidence, unless wherever there is a sudder ameen there is also a moonsiff, and wherever there is a principal sudder ameen there is also a sudder ameen; and not only this, but also, unless the inferior officers be not incapacitated, from relationship, interest, or other causes; but cases of this description can be better regulated by instructions from the Sudder Court than by a legislative Act.

I attach a draft clause for effectuating both the objects proposed in the above suggestions, and according to the plan which, it was suggested, would best effectuate them. I sent the clause to Mr. Millett, who has much considered the subject, and has had much experience with reference to it. I attach his answer, which I think contains some important objections to the clause as drafted.

I now propose, in order to meet the views of Mr. Bird and Mr. Prinsep, the following modification of section 5, where I have put a (A. A.): "And before granting any such commission, the court granting the same shall make particular inquiry as to the present residence of the witness whose deposition is to be taken under such commission, and as to the court of the same degree as the court granting such commissions, or of inferior degree to such court, which may be nearest to the place of residence of the witness, and the commission, except in cases of apparent inconvenience, shall be directed accordingly; but no commission shall be held to be void for misdirection on this account." *N.B.* The last words are necessary, otherwise a decree might be set aside upon a point of nice measurement.

I have proposed to turn the 9th section into a separate Act, according to the accompanying draft. It relates to criminal proceedings, which it will be recollected are conducted before a jury in the presidency towns. The judges have not been consulted upon it, and it seems to require publication.

The point which has occupied the Law Commission during several meetings, besides several private minutes, and upon which Sir E. Ryan has been consulted, is a very important one; it is in fact the only material alteration in the draft as sent to the Commission. The point is this, it is thought that a witness may quit Calcutta by a ship before a trial comes on. Under this Act, his deposition is taken forthwith; a few weeks afterwards the trial comes on: 1. Must the person seeking to use the deposition prove, before he can use it, that the witness has actually departed? 2. May he use it unless the opposite party shows that the witness is still within the jurisdiction? 3. May he use it notwithstanding the opposite party shows that the witness is still within the jurisdiction? The draft leaves all three modes discretionary. Sir E. Ryan says he will always insist on the first, and so should I, from a strong sense of the very weak nature of testimony

(C.) No. II.
Examination of Absent Witnesses.

not delivered at the time of trial, and from a knowledge that the rules which prohibit hearsay evidence seldom operate by excluding proof of a fact, but much more commonly by inducing persons to take trouble and get the most satisfactory instead of the worst evidence of it. Moreover, at Madras and Bombay, and possibly at Calcutta, it may be very inconvenient if one judge adopts rule No. 1, and another rule No. 2 or No. 3. However, I have yielded to the strong opinion of the mofussil members of the Commission, that rule No. 1 would quite upset the practice of the mofussil courts, whilst Sir E. Ryan says that, with the discretionary power, he shall immediately establish No. 1 as a rule for himself, and so he will raise no objection to the Act. I should have no hesitation in establishing No. 1 for all the supreme courts. But there are great advantages in making this important branch of the law of procedure applicable to all courts, and the Act as at present drafted appears to be the way of accomplishing that object with the least practical inconvenience.

(signed) *A. Amos*

"Provided also, in the case of commissions to be executed by courts, that all such commissions, except those to be executed within any presidency town, shall be directed to a judge (*N. B.* this must fit the three presidencies) having jurisdiction within the district within which the commission is to be executed, and the judge shall, at his discretion, execute the commission in his own court, or direct it to any subordinate court within his district, which shall have the same effect for all the purposes of this Act, as if the commission had in the first instance been directed to such subordinate court."

From *F. Millett*, Esq. to the Honourable *A. Amos*, Esq., dated 7 June 1841.

My dear Amos,

In the case supposed the moonsiff in the 24 Pergunnahs ought to direct his commission to that moonsiff in the Bardwan district within whose jurisdiction the witness resides. It was certainly our intention that he should do so, and I do not see why he should do otherwise. If there is any fear of the moonsiff preferring an inconvenient to a convenient mode of getting the evidence of absent witnesses, a circular order from the Sudder Dewanny would prevent them going wrong.

My objection to directing all commissions intended for other courts to the judge of the zillah or city, is the inconvenience and delay it may occasion.

E. g.: There are many moonsiffs courts at a great distance from the sudder station of the district to which they belong, in a particular direction, the court requiring the evidence will be still further, and the commission might have to travel some 200 miles more than it need to do; such was the case in the district where I was last stationed, viz. Beerbhoom.

The nearest moonsiffs court of the adjoining district of Bhaugulpore was not above 20 miles off my court-house, whilst the station of Bhaugulpore by the post-road was upwards of 200, I believe nearly 250 miles distant. It is better also that the parties in the case should know exactly where the evidence is to be taken, that, if they think proper, they may go themselves, or arrange for some persons being present on their behalf: this they could not so well do if they were uncertain whether the zillah judge, to whom the commission was directed, would take the evidence himself, or transfer the commission to a subordinate court.

I return the proposed proviso in case you may require it.

Yours, &c.

(signed) *F. Millett.*

(C.) No. II.
Examination of Absent Witnesses.

Legis. Cons. 14 June 1841. No. 7. Enclosure.

AN ACT for extending the Provisions of Act —— of 1841, entitled, "An Act for a more uniform Process for taking the Examination of Absent Witnesses," to Criminal Proceedings.

(Here copy section 9 of Absent Witness Act, with alterations in pencil.)

IT is hereby enacted, that such orders and commissions for taking the examinations of absent witnesses under Act —— of 1841, may be issued, executed, and enforced in manner provided for by that Act in any criminal proceeding pending in any court; provided always, that no deposition taken under this Act in the course of any criminal proceeding shall be read in evidence, unless taken in open court, except depositions of witnesses exempted by law absolutely, or at the discretion of the court, from personal appearance in court in criminal cases, or unable to attend in court from sickness or infirmity, and that no deposition of any accomplice shall be read in evidence under this Act; provided also, that no capital sentence shall be passed in any case in which the conviction of the accused depends in any degree upon the evidence contained in a deposition taken and read in evidence under this Act; provided also, that under no circumstances, except as hereinafter mentioned, shall any deposition taken under this Act be read in evidence in any criminal proceeding, unless it be proved that the deponent is dead, or is unable from permanent sickness or infirmity to attend to be personally examined, or distant more than 50 coss from the place where the court is held, or exempted by law absolutely, or at the discretion of the court, from personal appearance in court in criminal cases; and whenever a deposition shall be taken under this Act and the witness shall afterwards be personally examined in court, the deposition shall be read in evidence after the witness shall be so examined.

Legis. Cons. 14 June 1841. No. 8.

MINUTE by the Honourable *W. W. Bird*, Esq., subscribed to by the Honourable *H. T. Prinsep*, Esq., dated 12 June 1841.

Absent Witness Act.

I THINK, notwithstanding the objections urged by Mr. Millett, that an additional clause is necessary both to secure the evidence of the witness being taken before the proper court nearest to which he resides, and to prevent the time of the judge being occupied in taking such evidence at the request of inferior tribunals.

It is true that in adjoining districts it will be easy to ascertain the court nearest to the witness's place of residence, but not so in districts remotely situated, to which, of course, such references will be the most numerous. To meet both these objects, I would propose that the additional clause run as follows, to be inserted at the place in section 5 marked by Mr. Amos (A. A.): "And before granting any such commission, the court granting the same shall make particular inquiry as to the present residence of the witness whose deposition is to be taken under such commission, and as to the court of the same degree as the court granting such commission, or of inferior degree to such court, which may be nearest to the place of residence of the witness, and the commission shall be directed accordingly, except in cases of apparent inconvenience, when such commission shall be directed to the judge having jurisdiction within the district within which the commission is to be executed; and the judge shall at his discretion execute the commission in his own court, or direct it to any subordinate court within his district, which shall have the same effect for all the purposes of this Act as if the commission had in the first instance been directed to such subordinate court."

I have closely followed Mr. Amos in both his propositions on this point, and he will be able to add anything that may have been inadvertently omitted by me.

(signed) *W. W. Bird.*

I think the clause as here proposed by Mr. Bird will answer every purpose desired.

(signed) *H. T. Prinsep.*

(C.) No. II.
Examination of Absent Witnesses.

Act No. VII. of 1841.

Legis. Cons. 14 June 1841. No. 9.

Passed by the Right Honourable the Governor-general of India in Council on the 14th of June 1841.

An Act for a more uniform and an improved Process for taking the Examination of Absent Witnesses.

1. It is hereby enacted, that all Regulations and parts of Regulations for taking the examination of absent witnesses in any presidency are hereby repealed.

2. And it is hereby enacted, that it shall be lawful for any court within the territories under the government of the East India Company, and the several judges thereof, in every civil proceeding depending in such court, upon the application of any of the parties to such proceeding, to order the examination, upon interrogatories or otherwise, before any officer of any such court, or other person or persons named in such order, of any witnesses within the jurisdiction of the court where the proceeding shall be depending, or to order a commission to issue to any subordinate court for the examination of such witnesses upon interrogatories or otherwise, or to order a commission to issue to any other court for the examination of witnesses at any place or places out of such jurisdiction, upon interrogatories or otherwise, and by the same or any subsequent order or orders, to give all such directions for taking such examinations, as well within the jurisdiction of the court wherein the proceeding shall be depending as without, as may appear reasonable and just: provided always, that any court to whom any such commission shall be directed, shall take the examination in open court in all cases where witnesses are able to attend in court and are not exempted from attendance by law absolutely, or at the discretion of the court: provided also, that such commissions as aforesaid for the examination of witnesses out of such jurisdiction, may be directed otherwise than to some court under special circumstances, which may appear to the court issuing the commission to render such special direction expedient: provided also, that all commissions issued and orders made by any court of the East India Company, and which are required to be executed within the local limits of any of Her Majesty's supreme courts, shall be directed in manner hereinafter mentioned.

3. And it is hereby enacted, that when any order shall be made for the examination of witnesses within the jurisdiction of the court wherein any such proceeding as aforesaid shall be depending by the authority of this Act, it shall be lawful for the court, or any judge thereof, in and by the first order to be made in the matter, or any subsequent order, to command the attendance of any person to be named in such order, and to direct the attendance of any such person to be at his own place of residence or elsewhere, if necessary or convenient so to do, and to produce all necessary documents and papers; and the wilful disobedience to any such order shall be deemed a contempt of court and punishable as in other cases of refusing or neglecting to give testimony: provided always, that every person whose attendance shall be required under this Act, shall be entitled to the like payment for expenses and loss of time as upon attendance in court in cases where such expenses are now allowed.

4. And it is hereby enacted, that it shall be lawful for every court or person authorised to take the examination of witnesses by any order or commission issued in pursuance of this Act, and they are hereby authorised and required to take all such examinations upon oath or affirmation, where an affirmation is admissible or required upon a trial, and if upon such oath or affirmation any person making the same shall wilfully and corruptly give any false evidence, every person so offending shall be deemed and taken to be guilty of perjury, and every person causing or procuring another person to commit the offence of perjury hereby defined shall be guilty of subornation of perjury.

5. And it is hereby enacted, that before any order or commission for the examination of any witness under this Act shall be issued, the court or judge issuing the same shall be satisfied that there is good reason for believing that the witness will be unable to attend at the usual time for examination by reason of absence from the jurisdiction, sickness, or other cause allowed by law. And before granting any such commission, the court granting the same shall make particular inquiry as

to

(C.) No. II.
Examination of Absent Witnesses.

to the present residence of the witness whose deposition is to be taken under such commission, and as to the court of the same degree as the court granting such commission, or of inferior degree to such court, which may be nearest to the place of residence of the witness, and the commission shall ordinarily be directed to such court of equal or inferior degree as may most conveniently execute the same: provided, however, that if there be doubt as to which is the most convenient court of equal or inferior jurisdiction, such commission may be directed to the judge having jurisdiction within the district within which the commission is to be executed. And the judge shall at his discretion execute the commission in his own court, or direct it to any subordinate court within his district, which shall have the same effect for all the purposes of this Act as if the commission had in the first instance been directed to such subordinate court. And no deposition taken under this Act, except as hereinafter-mentioned, shall be read in evidence without the consent of the party against whom the same may be offered, unless it be proved that the deponent is beyond the jurisdiction of the court, or dead, or unable from sickness or infirmity to attend to be personally examined, or distant without collusion more than 50 coss from the place where the court is held, or exempted by law absolutely, or at the discretion of the court, from personal appearance in court, or unless the court shall, at its discretion, dispense with the proof of any of the above circumstances, or shall authorise the deposition of any witness being read in evidence notwithstanding proof that the causes for taking such deposition have ceased at the time of reading the same; and after the witness shall be produced, and shall have delivered his testimony, it shall be lawful for the court, at its discretion, to authorise the reading of the deposition. And all depositions taken under this Act, being duly certified, may be read, at the discretion of the court, without proof of the signature to such certificate.

6. And it is hereby enacted, that any court other than one of Her Majesty's courts, or any judge thereof, may issue such commissions as aforesaid, and such orders as are indicated in the second and third sections of this Act to be executed within the local limits of the jurisdiction of any of Her Majesty's courts, and all such commissions and orders, except when directed otherwise than to a court, shall be directed to a court of requests having jurisdiction within such limits or any part thereof.

7. And it is hereby enacted, that such commissions and orders as aforesaid may be issued for execution under this Act within the territories of princes and states in alliance with the East India Company, and all persons within such last-mentioned territories, being in the service of the East India Company, are hereby required to pay obedience thereto, and for disobedience thereof shall, on being found within the jurisdiction of the court or judge issuing any such commission or order, be punishable in like manner as if such offence had been committed within such jurisdiction; and for giving false testimony under the same shall be punishable by any court of justice within the territories of the East India Company.

8. And it is hereby enacted, that whenever the evidence of any absent witness shall be required out of the jurisdiction of the court in which the proceedings for which the evidence is wanted may be pending, and the commission shall be directed to any court, such court may punish the wilful disobedience of any such order as aforesaid as a contempt, notwithstanding it shall not itself have made such order, with the same amount of punishment as in other cases of refusing or neglecting to give testimony.

Fort William, Legislative Department, the 14th June 1841.

Legis. Cons. 14 June 1841. No. 10.

THE following draft of a proposed Act was read in Council for the first time on the 14th June 1841.

ACT No. —— of 1841.

An Act for extending the Provisions of Act VII. of 1841, entitled, "An Act for a more uniform Process for taking the Examination of Absent Witnesses," to Criminal Proceedings.

1. It is hereby enacted, that orders and commissions for taking the examinations of absent witnesses in the form and manner provided by Act VII. of 1841, for the case of witnesses whose evidence may be required in a civil action, or

(C.) No. II.
Examination of Absent Witnesses.

proceedings may be issued, executed, and enforced (in manner provided for by that Act) in any criminal proceeding pending in any court; provided always, that no deposition taken under this Act in the course of any criminal proceeding shall be read in evidence, unless taken in open court, except depositions of witnesses exempted by law absolutely, or at the discretion of the court, from personal appearance in court in criminal cases, or unable to attend in court from sickness or infirmity, and that no deposition of any accomplice shall be read in evidence under this Act; provided also, that no capital sentence shall be passed in any case in which the conviction of the accused depends in any degree upon the evidence contained in a deposition taken and read in evidence under this Act; provided also, that under no circumstances, except as hereinafter mentioned, shall any deposition taken under this Act be read in evidence in any criminal proceeding, unless it be proved that the deponent is dead, or is unable from permanent sickness or infirmity to attend to be personally examined, or distant more than 50 coss from the place where the court is held, or exempted by law absolutely, or at the discretion of the court, from personal appearance in court in criminal cases; and whenever a deposition shall be taken under this Act, and the witness shall afterwards be personally examined in court, the deposition shall be read in evidence after the witness shall be so examined.

Ordered, that the draft now read be published for general information.

Ordered, that the said draft be reconsidered at the first meeting of the Legislative Council of India after the 14th day of September next.

(signed) *T. H. Maddock*,
Secretary to the Government of India.

(No. 83.)

Legis. Cons. 14 June 1841. No. 11.

From *T. H. Maddock*, Esq. Secretary to the Government of India, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal.

Sir,

Legislative Dept.

With reference to your letters, Nos. 547 and 744, dated respectively the 13th April and 14th May last, with enclosures, I have the honour, by direction of the Governor-general in Council, to transmit to you for submission to the Right honourable the Governor of Bengal the accompanying copy of Act No. VII., of 1841, for a more uniform and an improved process for taking the examination of absent witnesses, passed into law under this date; also draft of a proposed Act for extending the provisions of that Act to criminal proceedings.

2. The original enclosure received with your letter of the 14th ultimo is returned herewith.

I have, &c.

(signed) *T. H. Maddock*,
Secretary to the Government of India.

Council Chamber,
14 June 1841.

—(C.) No. III.—

(C.) No. III.
Madras Judicial System.

ON THE MADRAS JUDICIAL SYSTEM.

(No. 173.)

From *H. Chamier*, Esq. Chief Secretary to the Government of Fort St. George, to *F. J. Halliday*, Esq. Junior Secretary to the Government of India.

Legis. Cons. 12 April 1841. No. 12.

Judicial Dept.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 308, dated 5th October 1840, and in reply to transmit for submission to the Right hon. the Governor-general of India in Council copies of the proceedings of the Sudder and Foujdaree Adawlut, dated 14th ultimo, conveying their opinion on the changes in the judicial system proposed by the Indian Law Commission, and of a minute recorded under date the 3d instant, by the Hon. Mr. Bird, on the same subject.

2. His Lordship in Council concurs generally in the views expressed by the judges of the Sudder and Foujdaree Adawlut in regard to the proposed changes, but is of opinion with Mr. Bird that it would be objectionable to authorise, as the judges suggest in the 7th paragraph of their proceedings, the sessions judge to pass sentence in cases which have not been investigated by that officer. The exercise of such a power would lead to the employment of the lower judicatories in taking evidence for the higher in cases which should be investigated exclusively by the latter.

3. With reference to the 9th paragraph of the proceedings, his Lordship in Council agrees with Mr. Bird in thinking that, as long as the use of the Mahomedan law is continued, it will be necessary to retain a law officer for each court, and the proposition that he shall continue to be associated with the sessions judge upon a trial of persons, and for reference to be made to him on questions of law, appears unobjectionable. He is of opinion also, for the reasons stated by Mr. Bird, that the futwah should be dispensed with, as recommended by the judges of the Sudder and Foujdaree Adawlut.

4. The plan of having distinct and separate courts at each station appears to his Lordship in Council to be objectionable, because of the double authority and control it will involve, because of the difficulty there would be in making a fair division of labour, which must always depend upon local circumstances, because of the expense it will occasion in providing at most of the stations new buildings for such separate courts, and because the business of the whole zillah will be much better conducted under one acknowledged head than under divided superintending authorities, who would be continually liable to come in collision with each other. It will be preferable, he thinks, that there should be a civil and criminal court at each Sudder station, with the civil and sessions judge at the head, and with subordinate judicatories attached, as recommended by the judges.

5. With reference to the conclusion of the 28th paragraph of the proceedings of the Sudder Adawlut, his Lordship in Council observes that there can be no necessity for requiring persons to proceed to Mangalore, when the special appeals from the Sudder Ameen of Sircy can be tried by the assistant judge of the proposed superior grade at Honore.

6. The Right hon. the Governor in Council agrees with the Sudder Adawlut in thinking that every court should issue its own order for the execution of its decrees, and should dispose of all miscellaneous petitions respecting such execution, subject of course to an appeal to the superior court.

7. The establishments proposed will require modification, and his Lordship in Council is not of opinion that the number of law officers in the Sudder Adawlut need exceed one Mahomedan and two Hindoos.

I have, &c.
(signed) *H. Chamier*,
Chief Secretary.

Fort St. George,
23 February 1841.

(No. 1.)

STATEMENT for the Year 1839, of DELAY.

Zillah, and Number of Trials disposed by the Foujdaree Adawlut, during the Year 1839.		In Preliminary Inquiry.						In the Circuit Court.						In the Foujdaree Adawlut.						TOTAL.					
		Trials at once Disposed of.			Trials Returned for further Evidence, &c.			Trials at once Disposed of.			Trials Returned for further Evidence, &c.			Trials at once Disposed of.			Trials Returned for further Evidence, &c.			Trials at once Disposed of.			Trials Returned for further Evidence, &c.		
		Between Apprehension and Trial.			Between Apprehension and Trial.			Between Trial and reference of the Record.			Between Trial and reference of the Record.			Between the Receipt of the Record and Sentence.			Between the Receipt of the Record and Sentence.			Between Trial and Sentence.			Between Trial and Sentence.		
		Shortest.	Longest.	Average.	Shortest.	Longest.	Average.	Shortest.	Longest.	Average.	Shortest.	Longest.	Average.	Shortest.	Longest.	Average.	Shortest.	Longest.	Average.	Shortest.	Longest.	Average.	Shortest.	Longest.	Average.
Chittoor	6	15	182	77	-	-	-	9	99	44	-	-	-	22	37	28	-	-	-	50	215	149			
	4	-	-	-	50	82	59	-	-	-	8	90	59	-	-	-	26	113	70	-	-	-	86	256	189
Masulipatam	1	42	42	42	-	-	-	32	32	32	-	-	-	30	30	30	-	-	-	104	104	104			
	1	-	-	-	152	152	152	-	-	-	78	78	78	-	-	-	118	118	118	-	-	-	348	348	348
Trichinopoly	1	37	37	37	-	-	-	21	21	21	-	-	-	19	19	19	-	-	-	77	77	77			
Tillicherry	1	66	66	66	-	-	-	13	13	13	-	-	-	27	27	27	-	-	-	106	106	106			
TOTAL	-	160	327	222	202	234	211	75	165	110	86	168	137	98	113	104	144	231	188	337	502	436	534	604	537
	4	40	82	55	-	-	-	19	41	27	-	-	-	24	28	26	-	-	-	84	125	102			
	2	-	-	-	101	117	105	-	-	-	43	84	68	-	-	-	72	115	94	-	-	-	217	302	268
Bellary	4	79	284	134	-	-	-	40	178	97	-	-	-	18	43	27	-	-	-	141	489	258			
Cuddapah	5	147	214	182	-	-	-	16	118	64	-	-	-	14	31	19	-	-	-	227	363	266			
	1	-	-	-	306	305	305	-	-	-	10	10	10	-	-	-	133	133	133	-	-	-	448	448	448
Cumbum	2	-	-	-	69	285	177	-	-	-	36	46	41	-	-	-	122	185	153	-	-	-	300	443	371
Chingleput	2	88	135	111	-	-	-	32	32	32	-	-	-	12	27	19	-	-	-	132	104	163			
Cuddalore	4	85	312	183	-	-	-	54	112	79	-	-	-	16	20	18	-	-	-	158	399	280			
Chicacole	10	110	374	237	-	-	-	69	169	131	-	-	-	12	57	24	-	-	-	254	556	392			
	1	-	-	-	321	321	321	-	-	-	143	143	143	-	-	-	47	47	47	-	-	-	511	511	511
Vizagapatam	8	83	203	140	-	-	-	115	174	149	-	-	-	15	25	20	-	-	-	222	381	309			
Rajamundry	*5	-	-	-	807	1185	1007	-	-	-	106	108	106	-	-	-	61	61	61	-	-	-	974	1352	1174
	6	43	371	157	-	-	-	78	116	101	-	-	-	15	32	22	-	-	-	181	512	281			
Nellore	6	41	158	90	-	-	-	24	83	61	-	-	-	25	50	40	-	-	-	126	238	191			
Guntoor	2	17	56	36	-	-	-	24	179	101	-	-	-	11	28	19	-	-	-	52	263	157			
Combaconum	1	82	82	82	-	-	-	82	82	82	-	-	-	21	21	21	-	-	-	185	185	185			
	2	-	-	-	217	223	220	-	-	-	8	13	10	-	-	-	53	59	56	-	-	-	283	290	286
Madura	5	92	217	144	-	-	-	26	31	29	-	-	-	9	40	18	-	-	-	135	287	191			
Tinnevelly	4	110	197	153	-	-	-	18	37	25	-	-	-	15	22	18	-	-	-	166	233	197			
Salam	2	30	37	33	-	-	-	43	46	44	-	-	-	12	15	13	-	-	-	91	92	91			
	2	-	-	-	13	90	51	-	-	-	11	29	20	-	-	-	40	45	42	-	-	-	82	146	114
Coimbatore	5	86	163	130	-	-	-	32	58	43	-	-	-	13	34	20	-	-	-	157	212	193			
Canara	5	71	191	130	-	-	-	7	20	14	-	-	-	17	33	23	-	-	-	112	235	173			
	1	-	-	-	99	99	99	-	-	-	15	15	15	-	-	-	89	89	89	-	-	-	203	203	203
Malabar	10	50	389	147	-	-	-	6	15	10	-	-	-	12	36	18	-	-	-	78	437	175			
	3	-	-	-	86	126	111	-	-	-	6	15	10	-	-	-	44	79	56	-	-	-	173	188	178
Cochin	1	158	158	158	-	-	-	18	18	18	-	-	-	21	21	21	-	-	-	197	197	197			
Sirsy	2	74	189	130	-	-	-	15	17	16	-	-	-	16	36	26	-	-	-	125	220	172			
TOTAL	-	1446	3727	2377	1917	2634	2291	699	1485	1906	335	379	355	274	571	386	589	698	637	2739	5483	3871	2974	3581	3285
Average	18	80	207	131	-	-	-	39	82	61	-	-	-	15	32	21	-	-	-	152	305	215			
	8	-	-	-	240	329	286	-	-	-	42	47	44	-	-	-	73	87	79	-	-	-	372	447	410

* Thug cases.

(signed) *W. Douglas*, Regr.

(A true copy.)

(signed) *H. Chamier*, Chief Secy.

(No. 2.)

STATIONS.	CIVIL SESSION JUDGES.	ASSISTANT JUDGES.	PRINCIPAL SUDDER AMEENS.	SUDDER AMEENS.
1. Bellarie	1	1	-	1. Mooftee Sudder Ameen.
				2. Ditto - - ditto.
2. Cuddapah	1	1	-	3. Pundit Sudder Ameen.
				4. Mooftee ditto.
				5. Extra ditto.
3. Chittoor	1	1	-	6. Pundit Sudder Ameen.
				7. Provincial ditto.
4. Chingleput	1	-	1	8. Mooftee Sudder Ameen.
5. Cuddalore	1	-	1	9. Pundit Sudder Ameen.
6. Nellore	1	-	1	10. Mooftee Sudder Ameen.
7. Guntoor	1	-	1	11. One.
8. Masulipatam	1	-	1	12. Provincial Court Sudder Ameen.
9. Rajamundry	1	1	-	13. Pundit Sudder Ameen.
				14. Mooftee ditto.
10. Vizagapatam	-	-	1 detached	15. Pundit Sudder Ameen.
10. Chicacole	1	—	—	—
10. Itchapoor	-	-	1 detached	16. Mooftee Sudder Ameen.
11. Trichinopoly	1	-	1	17. Provincial Court Sudder Ameen.
12. Combaconum	1	1	-	18. Pundit Sudder Ameen.
				19. Mooftee ditto.
13. Madura	1	1	-	20. Pundit Sudder Ameen.
				21. Sudder Ameen.
14. Tinnevelly	1	-	1	22. One.
15. Coimbatore	1	1	-	23. Pundit Sudder Ameen.
				24. Ditto - - ditto.
16. Salem	1	1	-	25. Mooftee Sudder Ameen.
17. Mangalore	1	2	-	26. Pundit ditto.
				27. Mooftee Sudder Ameen.
				28. Pundit ditto.
				29. Sudder Ameen.
Honore	-	1 detached	-	30. One.
Sirsee	-	-	-	31. One detached.
18. Calicut	-	1	-	32. Pundit Sudder Ameen.
				33. Mooftee ditto.
Tillicherry	-	1 detached	-	34. Provincial Court Sudder Ameen.
Cochin	-	-	1 detached	—

(signed) *W. Douglas*, Reg^r.

(True copy.)
(signed) *H. Chamier*, Chief Sec^y.

(No. 3.)

				Rs.	as.	p.	Rs.	as.	p.	Rs.	as.	p.
12 Provincial Judges				-	-	-	-	-	-	4,62,000	-	-
12 Zillah Judges				-	-	-	-	-	-	3,36,000	-	-
9 Assistant Judges				-	-	-	-	-	-	1,51,200	-	-
3 Principal Sudder Ameens				-	-	-	-	-	-	18,000	-	-
3 Provincial Registers				-	-	-	-	-	-	25,000	-	-
11 Zillah Registers				-	-	-	-	-	-	85,200	-	-
4 Provincial Courts Establishments (exclusive of law officers)				-	-	-	-	-	-	64,370	6	-
Present Establishment of the 11 Zillah, 9 Auxiliary, and 3 Principal Sudder Ameens' Courts				-	-	-	-	-	-	2,19,132	-	-
										13,61,102	6	-
18 Sessions and Civil Judges			at	2,333	-	-	5,03,928	-	-			
11 Assistant Judges			at	1,400	-	-	1,84,800	-	-			
2 Ditto - ditto			at	1,750	-	-	42,000	-	-			
10 Principal Sudder Ameens			at	500	-	-	60,000	-	-			
Sudder Ameens now employed - 28 to be employed 34												
Difference - - - - - 6			at	200	-	-	14,400	-	-			
Establishment for 6 Sudder Ameens				45	-	-	3,240	-	-			
Ditto for 10 Sessions and Civil Judges, with an Assistant Judge each			at	1,253	-	-	1,50,450	-	-			

(continued)

(C.) No. III.
Madras Judicial System.

	Rs. as. p.	Rs. as. p.	Rs. as. p.
Establishment for 7 Sessions and Civil Judges, with a Principal Sudder Ameen each - at	1,126 – –	94,534 – –	
Ditto for Sessions Judge at Chicacole, as Vizagapatam at present - - - at	645 – –	7,740 – –	
Detached:			
Establishment for an Assistant Judge at Honore - - - - - - at	568 12 –	6,825 – –	
Ditto for an Assistant Judge at Tellicherry - - - - - - - at	655 12 –	7,869 – –	
Ditto for a Principal Sudder Ameen at Itchapore - - - - - at	414 8 –	4,974 – –	
Ditto for a ditto at Vizagapatam - at	414 8 –	4,974 – –	
Ditto for a ditto at Cochin - - at	466 – –	5,592 – –	
Ditto for a Sudder Ameen at Sirsy - at	100 – –	1,200 – –	
		10,92,576 – –	
New Translators in the Sudder Court - at	- - -	19,824 – –	
			11,12,400 – –
Decrease - - - - -	- - -	- - -	2,48,702 6 –

(signed) *W. Douglas*, Regr.

(True copy.)

(signed) *H. Chamier*, Chief Secy.

(No. 4.)

Memorandum of the Pay of the Translators in the—			Rs. as. p.	Rs. as. p.
Zillah Court of -	Nellore - -	1 Translator - - - - -	- - -	70 – –
—	Rajamundry -	1 Ditto - - - -	70 – –	
		1 Deputy ditto - - -	42 – –	
				112 – –
—	Malabar -	1 Translator - - - -	- - -	70 – –
—	Madura -	1 Ditto - - - -	50 – –	
		1 Ditto - - - -	30 – –	
				80 – –
—	Salem - -	None.	—	—
—	Bellaree -	1 Translator - - - -	- - -	70 – –
—	Canara -	1 Ditto - - - -	85 – –	
		1 Ditto - - - -	52 8 –	
		1 Ditto under the Assistant Judge.	52 8 –	
				190 – –
—	Combaconum -	1 Translator - - - -	- - -	70 – –
—	Chingleput -	1 Ditto - - - -	- - -	70 – –
—	Cuddapah -	1 Ditto - - - -	70 – –	
		1 Ditto - - - -	35 – –	
		1 Ditto - - - -	30 – –	
				135 – –
—	Chittoor -	1 Ditto - - - -	- - -	87 8 –
Auxiliary Court at	Guntoor -	1 Ditto - - - -	- - -	70 – –
—	Coimbatore -	None.	—	—
—	Vizagapatam -	1 Translator - - - -	70 – –	
		1 Ditto - - - -	40 – –	
				110 – –
—	Masulipatam -	1 Ditto - - - -	50 – –	
		1 Ditto - - - -	35 – –	
				85 – –
—	Tillicherry -	1 Head English Writer and Translator.	- - -	55 – –
—	Cochin - -	1 Ditto - - - -	- - -	55 – –
—	Tinnevelly -	1 Ditto - - - -	- - -	50 – –
—	Trichinopoly -	1 Ditto - - - -	- - -	60 – –
—	Cuddalore -	1 Translator - - - -	- - -	70 – –
Principal Sudder Ameens, Court of	Itchapore -	1 Ditto - - - -	- - -	70 – –
	Honore - -	1 English Writer and Translator	- - -	72 8 –
—	Sircy - -	None.	—	—
		TOTAL Rupees - - - -		1,652 – –

(signed) *W. Douglas*, Regr.

(A true copy.)

(signed) *H. Chamier*, Chief Secy.

(No. 5.)

ESTABLISHMENT of the Civil and Session Judges, with an Assistant Judge to each.

	Rs.	as.	p.
1 Nazir	100	–	–
1 Naib	35	–	–
1 Sheristadar	80	–	–
1 Deputy	30	–	–
18 Gomastahs, at 13/8	241	–	–
1 Head Writer	70	–	–
8 English Writers	213	–	–
1 Native Register	35	–	–
1 Record Keeper	40	–	–
1 Deputy	20	–	–
1 Head Juwabnavees	30	–	–
1 Sub ditto	25	–	–
1 Government Vakeel	20	–	–
1 Shoroff	14	–	–
1 Moochee	10	8	–
1 Ructwan	5	4	–
1 Mussoljee	5	4	–
1 Sweeper	3	8	–
1 Duffadar	10	8	–
12 Deloyets	84	–	–
30 Peons	157	8	–
1 Whipper	5	4	–

(signed) *W. Douglas*, Regr.

(A true copy.)
(signed) *H. Chamier*, Chief Secy.

(No. 6.)

ESTABLISHMENT of the Civil and Session Judges, with a Principal Sudder Ameen.

	Rs.	as.	p.
1 Nazir	100	–	–
1 Naib	35	–	–
1 Sheristadar	80	–	–
1 Deputy	30	–	–
15 Gomastahs	209	–	–
1 Head Writer	70	–	–
8 English Writers	179	–	–
1 Native Register	35	–	–
1 Record Keeper	40	–	–
1 Deputy ditto	20	–	–
1 Head Juwabnavees	28	–	–
1 Sub ditto	20	–	–
1 Government Vakeel	20	–	–
1 Shoroff	14	–	–
1 Moochee	10	8	–
1 Ructwan	5	4	–
1 Mussalchee	5	4	–
1 Sweeper	3	8	–
1 Duffadar	10	8	–
10 Deloyets, at 7 rs. each	70	–	–
25 Peons, at 5 ¼ rs. each	131	4	–
1 Whipper	5	4	–

(signed) *W. Douglas*, Regr.

(A true copy.)
(signed) *H. Chamier*, Chief Secy.

(A.)

(No. 7.)

EXTRACT from the Proceedings of the Sudder and Foujdaree Adawlut, under date the 14th January 1841.

Legis. Cons. 12 April 1841. No. 14. Enclosure.

READ extract from the Minutes of Council under date the 9th November last, forwarding copy of a despatch from the Supreme Government, and of a letter from the Law Commission, and requesting the sentiments of this court on the proposed alterations in the judicial system under this presidency, which are therein specified.

Criminal Judicature.

1. The judges of the Sudder and Foujdaree Adawlut most fully concur in opinion with the Law Commission as to the necessity for adopting measures to shorten the period between the arrest and trial of persons accused of the more heinous crimes. But the arrangement suggested by the Law Commission for this purpose, though it will lessen in a material degree the delay previous to trial, will by no means remedy the existing evil to the extent which its magnitude requires. It will in fact do nothing more than render universal throughout the provinces the half measure directed by the circular order of the Foujdaree Adawlut, under date the 22d March 1830, to be carried into effect at the four stations under this presidency, at which provincial courts are placed, and quarter sessions held, which went to make such sessions permanent.

No. 1.

2. The annexed statement No. 1, will show that, during the last year 1839, this arrangement reduced the period between arrest and trial at the said four stations* on an average to 55 days instead of 27 days, as calculated by the Law Commission, and that the delay elsewhere, now averaging 132 days †, will, by the universal adoption of permanent sessions, be reduced only to 55 days. The delay between arrest and trial, even after the introduction of this arrangement, would, therefore, still continue to be very considerable. Prosecutors and witnesses are occasionally now sent back to their respective villages from the four stations in question, where it is now in operation, to return again when the final trial commences; and

Chittoor:	Days.
Masulipatam, shortest	40
Trichinopoly, longest	82
Tillicherry, average	55*

In para. 14, *vide* note.

Shortest	80
Longest	207
Average	132†

½) 55 days' delay-27 ½ calculated on by the Law Commission.

and experience has shown that the advantage from the general adoption of the measure, thus already partially introduced, will ensure only to the extent of about one-half the result calculated on by the Law Commission.

3. In the gravest crimes, three examinations of each case would still continue to be held; two of them conducted generally under the same roof. The recollection on the part of the witnesses would no doubt be more fresh than at present, still the vivid impressions of the first would be greatly obscured before the third examination; and the prison intrigue and chicanery which promote recantation, false defences, and perjury in their support would in no respect be diminished.

4. But the chief argument against the continuance of the present harassing system of three separate investigations is, that the extreme annoyance of such repeated attendance, the extent of which can be measured by nothing but the feelings of the people themselves, drives many away from our courts, and induces them either to conceal altogether their sufferings from crime, or to refrain from stating their true extent, rather than undergo the infliction of the losses and the personal vexation which are involved in such repeated and lengthened attendance on our tribunals. Besides, the very delay which elapses between the collection of the evidence by the committing tribunal, and the hearing of it by the judge who is to decide upon it, from the facilities which it affords to the manufacture of false evidence, is itself one of the most exciting causes of perjury, and consequent erroneous judgments, so that even suffering by crime is in some districts an evil less dreaded than the protracted attendance necessary on our courts, which often does not terminate in the conviction of the offenders.

5. If change, therefore, is resolved upon, it appears to the Foujdaree Adawlut, that the improvement should be as effectual as possible, and that the evil can be completely eradicated by nothing less than some arrangement under which a single trial by an European judge shall do the work of the two now conducted by the criminal and circuit courts respectively. Indeed, as regards European and American prisoners, as well as in all cases tried by the Governor's agent, the Law Commissioners themselves suggest the entire abolition of the intermediate state of committal, and propose offenders should go direct at once from the native police or magistracy who arrest to the judge who is to try them. The same mode of proceeding at present obtains in all cases liable to sentence by the criminal courts, and the courts of circuit are the only courts in which it does not obtain. The Foujdaree Adawlut see the most urgent reasons for its adoption universally; they would therefore suggest, that all cases not punishable by the police or magistracy, should go direct from them to the sessions judge, whose duty it would be at once to distribute them to the respective authorities, who, under the new plan proposed by the Law Commission, will be competent to try and pass sentence on the offenders, except at the six detached courts specified in the statement No. 2, to which the magistracy and the police should send such cases as they are competent to decide direct, forwarding to the sessions judge direct all other graver offences.

6. It will be necessary under this arrangement, that the sessions judge should himself perform what may remain to be done, in order to complete each case for trial that is to be tried by himself, but this is only what is often now done by circuit judges, and always by criminal judges, sudder ameens and assistant criminal judges, in cases in which sentence is passed by themselves, and what will be done under the proposed new arrangement by assistant judges and principal sudder ameens in cases in which sentence is passed by them; and the Foujdaree Adawlut believe, that it never has been and never will be found liable to any objection so far as the trial itself is concerned. It will besides be attended with three obvious advantages, viz. 1st, It will bring higher qualifications to bear upon the preparation of the cases; 2nd, The preparation will be more exactly adapted to the trial, both being the work of the same person, who must know better than any other can know what parts of the case require further elucidation for the full satisfaction of his own mind in the discovery of the truth; and 3dly, it will be a clear saving of so much of the assistant judge's or principal sudder ameen's time, and of so much delay before the trial as it would take to hear and consider the original informations without taking up but a very little more of the judge's time than if that work had been performed by the assistant judge or principal sudder ameen; for whatever either of these did,

did, the judge must still, before the trial, make himself acquainted with all the previous informations and proceedings. If the original informations were sent up to the judge immediately that they are completed, without waiting, as is now done, for all the parties concerned to accompany them, and if the judge were to communicate direct with the officer by whom the informations are taken, as he, in cases to be tried by him, and the assistant judges and principal sudder ameens in cases to be tried by them, ought to be empowered and required to do, it is probable that the trial might be entered upon with all the advantages of the highest previous preparation with very little more delay than it is now usually entered upon without any of them. But this can be attained only by the judge himself, who is to pass the sentence, completing the preparation for trial.

7. It may be requisite occasionally, where a case on inquiry proves graver than what is charged by the police or magistracy, and the authority who investigates it finds himself incompetent to pass sentence, that it should be handed on by the lower to the higher court for sentence. But in such cases the higher court need not be required to hold further proceedings, except it deems it necessary to take new evidence on points upon which that taken by the lower tribunal may appear to it defective.

8. This plan will likewise involve the consequence, that a prisoner once put on his trial, for even the greatest offence, can never again be brought forward for the same crime. But this will merely extend to the most serious crimes, the same principle which is now acted on as regards all minor offences; a greater latitude, however, must necessarily be given to the police, as to the period within which proof of the graver crimes is to be completed.

9. The Foujdaree Adawlut concur with the Law Commission in opinion that it will be "proper to leave the criminal law as it now stands until Government shall come to a determination upon the penal code;" but they do not think it necessary that the sessions judge should be "assisted by the Mahomedan law officer." They are of opinion that, as in their own court, and in the courts of the Governor's agent, so elsewhere all futwahs may be safely abolished, and that where the Madras Code and the Acts of the Supreme Government do not define the punishment, the criminal tribunals should administer the Mahomedan law as explained by the Foujdaree Adawlut, to whom, in all cases of doubt or difficulty, they should make a reference for its interpretation. The principle acknowledged in Regulation VI. 1832 of the Bengal Code, as well as in the Rules passed by this government for the agents of the Governor of Fort St. George, fully recognizes the propriety of entrusting solely to the experienced European functionary the decision of cases in the court where he presides, and the Foujdaree Adawlut hope this may be done with perfect safety in all criminal cases coming before judicial officers of such standing as those likely to be nominated to the situation of sessions judge, especially under the new check of requiring from them notes in English in all trials referred to the Foujdaree Adawlut, and that already existing in the calendars. But if, notwithstanding the recognition of this principle both at Madras and Bengal, the previous opinion expressed by the Honourable Court of Directors, in their despatch of the 12th October 1831, penned in ignorance of the adoption of this principle by the Indian Legislature, is deemed to require that the sessions judge should have the benefit of some native aid, either the present law officers may be nominated his assessors, or the sessions judge may be empowered to avail himself of the services of respectable natives, nearly as a jury, upon the principle either of Regulation VI. 1832 of the Bombay Code, or of Regulation X. 1827 of that for Madras. The Foujdaree Adawlut are strongly inclined to the gradual and discretionary introduction of this plan.

10. With reference to paras. 18 and 19 of the letter from the Law Commission, the Foujdaree Adawlut are of opinion, that the calendars and statements now submitted by the criminal judges, assistant judges, and principal sudder ameens to the judges on circuit, may safely be dispensed with altogether under the new arrangement; the monthly reports now submitted by them respectively direct to the Foujdaree Adawlut, being sufficient for every purpose of superintendence and correction, and these monthly reports need not undergo any revision by the sessions judge. The revision of them by the present courts of circuit has for several years been given up, it having been found by experience, that little time or labour was saved by it to the Court of Foujdaree

daree Adawlut, and something perhaps lost in uniformity of principle and practice. The subject matter of the calendars and statements prepared for the judge on circuit, and of the monthly reports submitted to the Foujdaree Adawlut, is the same, with the difference only, that the latter contain an account of the evidence in each case, which the former do not. The discontinuance of these calendars and statements will not interfere with the exercise by the sessions judge of the power vested in the present collective courts of circuit by Section 24, Regulation X. of 1816, or in the judge on circuit by Clause 3, Section 4, Regulation II. of 1822, and Clause 2, Section 8, Regulation VI. of 1827, so far as the latter relates to the province of the criminal judges.

11. The Foujdaree Adawlut are of opinion that the removal of any native police officer for abuse of authority or neglect of duty, when proposed by the sessions judge, as arising out of cases tried either by himself or by the courts under him, should lie open to decision only by the Foujdaree Adawlut upon the report of the sessions judge. He should forward a copy of his report to the magistrate, who ought to be at liberty to address direct to the Foujdaree Adawlut any explanation or objection he may have to offer. All neglect or dilatoriness on the part of the police or magistracy in respect to cases before the sessions judge, assistant judge, or principal sudder ameen respectively, should be brought before the Foujdaree Adawlut either by special report or in the established returns, that the same may be noticed and rectified, the returns of the assistant judges and principal sudder ameens being forwarded, as at present, direct to the Foujdaree Adawlut.

12. Against all sentences passed by the magistracy, whether for petty offences or in regard to persons held to security, the Foujdaree Adawlut are satisfied that an appeal had better lie, in the first instance, to the sessions judge, because the distance of the presidency will otherwise render the appeal from the provinces merely nominal instead of real; but though the sessions judge should have the power to receive such appeals, and to call for the proceedings of the magistracy, or for explanations from them, the decision thereon should be reserved to the Foujdaree Adawlut alone, who should possess the power of calling for such further explanations as they might deem requisite, and of issuing such orders as justice might require in conformity with the general provisions of the code.

13. It will likewise be essential to the speedy disposal of current cases, that, as provided in Regulation III. 1807, the most unrestrained and direct communication should exist between the sessions judge, assistant judge, and principal sudder ameen respectively, and the magistracy or police, whichever of the two may have forwarded the case, in regard to any further evidence that may be required in the cases under trial; it being understood that all other correspondence must be addressed to the magistrate exclusively, who alone is competent to issue orders on other subjects to the native police, and that, except at the detached courts, such other correspondence is to be conducted by the sessions judge alone.

14. It seems sufficient that the reports on the working of the new system, proposed in para. 21 of the letter from the Law Commission, should be made by the sessions judge only once at the close of each year, when the usual criminal returns are forwarded.

15. In para. 48 of their letter, the Law Commission state that there is only one district in which it will be necessary to provide for the trial of cases cognizable by the sessions judge at a place detached from his own station, viz. Canara; and they propose that the sessions judge at Mangalore shall go on circuit to Honore at least once in every year. The Law Commission overlook the fact that in Malabar, also both Cochin and Tillicherry, at which assistant judges are stationed, are detached to a considerable distance on each side of Calicut, the station of the present zillah, and of the future sessions judge.

16. In no part of the provinces under this government is there greater or more important litigation, or more frequent and more serious crime, than in Malabar and Canara, and the temporary absence of the civil and session judges from either Mangalore or Calicut, in order to relieve the gaols at Sirsee and Honore, or Cochin and Tillicherry respectively, would throw the whole of the judicial business, both civil and criminal, into serious arrear, at the very stations

(C.) No. III.
Madras Judicial System.

tions where such an event is perhaps the most to be deprecated, whilst a circuit to these detached stations only once in the year would also aggravate the delay now experienced at these places, as elsewhere, in the delivery of the gaols only half-yearly.

17. The judicial duties, both at Sirsee and Cochin, are extremely light, as shown in the margin. But the local peculiarities of these two stations are very different. The former is situated above the Ghauts, in a thinly peopled country, where litigation is trifling, but crime not unusual; the latter is a considerable town, with a large population, including several of European descent, amongst whom civil disputes are more frequent than criminal offences. Cochin is also much resorted to by European shipping, and it is essential for the peace of the place and the prosperity of its trade, that the superintendence of justice should there be placed in the hands of a European. The Foujdaree Adawlut, therefore, are of opinion, that it will be sufficient to station at Sirsee a sudder ameen instead of a principal sudder ameen, with power to decide cases cognizable by a sudder ameen without the intervention of the judge or assistant judge, all criminal cases not adjudicable by him being forwarded by the magistracy or the police direct to Honore, to be there finally disposed of by the assistant judge. At Cochin, a European principal sudder ameen will suffice in lieu of an assistant judge. But it will be necessary that, in addition to his own powers, he should possess, as the present assistant judge there now does, the authority of a justice of the peace, and of joint magistrate also, and that his jurisdiction should extend over Europeans as well as Americans, in order that, be the offender who he may, he may have primary cognizance of all offences, forwarding the cases of which he may be incompetent finally to dispose, to the sessions judge at Calicut.

1839:—File Date.

	Or Suits	Appeals.	Total.	Criminal Cases.
Sirsee -	42	11	53	74
Cochin -	79	17	96	41

18. The Foujdaree Adawlut would likewise submit that the assistant judges at Honore and Tillicherry should be officers of standing in the service, selected for their experience, and placed on a superior rate of allowance, say Rs. 1,750 per mensem, and that they should, as an exception from the rest, be vested, in addition to their own powers, with those also proposed to be vested elsewhere in the sessions judge alone; for this is the sole means that can be suggested to expedite trials at these two stations as much as elsewhere, so as to render unnecessary any circuit or detachment of the sessions judges from Mangalore and Calicut, which is open to far greater objection than this expedient.

19. With reference to paragraph 17 of the letter from the Law Commission, the Foujdaree Adawlut are of opinion, that except at Cochin, the gaolers at every station where there is a European functionary*, should be Europeans exclusively, and that, except where the stations are detached† from that of the civil and session judge, he alone should be authorised to superintend the gaols, the detailed management thereof being vested in the assistant judges, as proposed by the Law Commission, where such officers exist. The Foujdaree Adawlut propose, in modification of the Bengal plan, to exclude the principal sudder ameens from the superintendence of the gaols where European judicial officers exist, because it is presumed that the principal sudder ameens will generally be natives, and usually persons of the higher castes, most likely by their superior education, intelligence, and wealth to rise above the rest of their countrymen. Now, most natives of this description would consider themselves polluted by entering the wards of a goal or coming into immediate contact with the crowds of its inmates, consisting usually of the very lowest and most impure of all outcasts, and they would either shrink altogether from a duty so repugnant to the feelings and prejudices of caste, or would perform it with repugnance, superficially and ineffectively. Besides, they never could properly control the European gaoler, and might be more liable than covenanted servants to favour the rich or influential convicted of perjury, forgery, &c.

* The only stations where there are proposed to be no European judicial functionary will be,
1. Vizagapatam.
2. Itchapoor.
3. Sirsee.

† The detached stations are proposed to be,
1. Assistant Judge, Honore.
2. Assistant Judge, Tillicherry.
3. Principal Sudder Ameen, Cochin.
4. Principal Sudder Ameen, Vizagapatam.
5. Principal Sudder Ameen, Itchapore.
6. Sudder Ameen at Sirsee.

20. Subject to the modifications above proposed, the Foujdaree Adawlut entirely approve the suggestions contained in the letter from the Law Commission, from paragraph 12 to 23 inclusive.

21. The adoption of the arrangements proposed by the Law Commission in paragraphs 61 and 62 of their letter, will no doubt expedite translations, and complete that reform which seems necessary of the criminal judicature under this Presidency. Section 5 as well as Section 4, Regulation IX. of 1831, of the Bengal Code, may advantageously be rendered applicable to the Foujdaree

(C.) No. III.
Madras Judicial System.

Adawlut, and the transmission to the Foujdaree Adawlut of notes in English, taken down at the time, of all trials referred by the sessions judge, accompanied by the original record, (a measure long ago proposed here by the acting second puisne judge, Mr. Dickinson, when a judge of circuit,) will, in the opinion of the Foujdaree Adawlut, be a great improvement; for it will not only relieve the sessions court altogether from the burden of translation, but will ensure stricter attention to the evidence by the judge who tries the case.

Civil Judicature.

22. With respect to the alteration proposed by the Law Commission generally, but especially in regard to those for improving the administration of civil justice in the Madras territories, much will depend on the selection made of efficient officers to fill the highly important situation of session and civil judge; and with the view at once to save unnecessary expenditure for separate court houses and for distinct establishments, to simplify the plan, and to prevent all clashing of authority by placing the whole of the subordinate functionaries under the immediate eye and personal control of the most experienced head, the Sudder Adawlut would suggest that at the 18 principal and most centrical stations in each province, specified in the statement No. 2, there should be a single court for the distribution of civil justice to all, over which he should preside, aided, according to the judicial importance of the station, either by an assistant judge or a principal sudder ameen, with the requisite number of sudder ameens, as shown in the said annexed statement, No. 2.

23. It is proposed that the latter should be appointed by the Sudder Adawlut on the recommendation of the civil judge, who will generally select the most distinguished district moonsiffs for that office.

24. As proposed by the Law Commission, one of the chief duties of the civil judge will be the supervision of the important work performed by the district moonsiffs, now forming one of the principal and most useful branches of our civil judicature. It is accordingly contemplated that he should nominate them, subject to the confirmation of the Sudder Adawlut, and that they should be removable only by him, subject on his report to the confirmation of the Sudder Adawlut.

25. In regard to original suits, it is contemplated by the Sudder Adawlut, as proposed by the Law Commission, that the civil judge should file all such as are now cognizable by the provincial courts, and where he is aided by only a principal sudder ameen, such also as the latter is incompetent to decide; all others being filed by his assistant judge or principal sudder ameen, as provided in Regulation I. and VII. 1827 respectively, such as they cannot decide being liable to be referred, as at present, to the files of the sudder ameens and district moonsiffs.

26. In regard to regular or summary appeals, it is proposed that all without exception should lie in the first instance to the civil judge, whether from district moonsiffs, sudder ameens, or from his principal sudder ameen or assistant judge, but that he should have power to refer such appeals from the two former as he may be unable himself to decide to which of the two latter officers may be attached to his court.

27. Under this plan, all special appeals will lie to the Sudder Adawlut, as proposed by the Law Commission, except when the civil judge has been unable to decide the regular appeal, and has referred it for decision by the assistant judge or principal sudder ameen attached to his court. In this case the special appeal will lie to himself instead of to the Sudder Adawlut, as is proposed also in the next paragraph respecting the detached courts.

28. As an exception from the above, it is proposed, as suggested by the Law Commission, that at the detached courts of the assistant judges at Honore and Tillicherry, of the principal sudder ameens at Vizagapatam, Itchapore, and Cochin, and of sudder ameen at Sirsee, these officers respectively should receive and decide appeals direct from such of the district moonsiffs under them, as the Sudder Adawlut may attach to each. In such cases also, the special appeal only, instead of the regular one from the district moonsiffs, will lie to the civil judge. Regular appeals will of course lie from original suits decided by the said assistant judges and principal sudder ameens to their superior civil judge. But as regards those from the sudder ameen at Sirsee, it should be provided that an appeal will lie to the assistant judge at Honore, and not to the civil judge at Mangalore, to whom only a special appeal should lie from the decision of that Sudder Ameen.

29. The

29. The Sudder Adawlut entirely concur in opinion with the Law Commission that general questions of law or usage, such as special appeals frequently involve, should be decided by the highest tribunal; but the practicability of attaining this desideratum must depend on the working power of that court being made adequate to this labour, and on the arrangements made in the lower courts for the decision of regular appeals.

30. At present special appeals to the Sudder Adawlut are limited to original suits decided by the 12 zillah judges, or such original suits, exceeding 1,000 rupees, as may be decided by the nine auxiliary courts and the three principal sudder ameens. It is now proposed to transfer from the 12 judges of the four provincial courts to the three judges of the Sudder Adawlut, instead of to the 18 civil judges to be substituted for the provincial court, all special appeals from original suits unlimited as to the minimum value, which may be passed by the 13 assistant judges, 10 principal sudder ameens, 34 sudder ameens, and 100 moonsiffs.

31. For the last ten years the number of appeals of every description filed and disposed of by the Sudder Adawlut at Madras, has never on an average exceeded 12 per annum, the greatest number decided in any one year having been no more than 22. The number of suits on the file of the Sudder Adawlut may therefore be safely augmented to a considerable extent, especially under the new division of labour proposed by the Law Commission amongst the judges. But the judges of the Sudder Adawlut fear that, with every exertion on their part, the Legislature will overrate their powers as regards special appeals, if they estimate each of the three judges as capable of performing duty fourfold greater than that which has hitherto devolved on each judge of the four provincial courts.

YEARS.	Appeal Suits Filed.	Appeal Suits Disposed of.
1830	8	18
1831	9	14
1832	8	8
1833	5	11
1834	6	7
1835	15	7
1836	18	6
1837	12	22
1838	12	10
1839	18	9
TOTAL	111	112
Average	11 and a fraction	11 and a fraction

32. Accordingly, until experience shall have enabled the Government to ascertain the result of the proposed changes, the Sudder Adawlut think it will be prudent, as above suggested, to extend their admission of special appeals to suits originally decided by the 13 assistant judges, 10 principal sudder ameens, and 34 sudder ameens alone, and to such only of those originally decided by the 100 moonsiffs, as may have been decided in regular appeal by the 18 civil judges.

33. Under the foregoing modifications the Sudder Adawlut are prepared to support the changes proposed for the improvement of the civil judicature in the letter from the Law Commission, from paragraph 24 to 33 inclusive.

34. The above remarks apply chiefly to cases of special appeal involving general questions of law or usage. But it has occasionally been usual under this presidency to admit special appeals from decrees passed upon a regular appeal, which on their face appear to be contrary to or at variance with the evidence upon which they profess to be based, in the same manner that new trials are granted in England. This is done on the principle that a decree contrary to evidence is contrary to judicial precedent. The judges think, in lieu of admitting a special appeal to the Sudder Adawlut in such cases, it will be preferable, in such of them as originate in the decrees of district moonsiffs, that the civil judge should invariably refer the regular appeal to his assistant judge or principal sudder ameen, so that the special appeal should come before himself.

35. The judges are of opinion with the Law Commission, that the highest importance attaches to the suggestion contained in para. 60 of their letter, "which authorises a judge, if, on hearing a petition appeal, he is of opinion that no ground has been shown to impugn the correctness or justice of the decision or order appealed against, to confirm the same without requiring the attendance of the opposite party, and without a revision of the whole proceedings," which the Law Commission proposes to confine to the courts of Sudder Adawlut and of the civil judges.

36. The Sudder Adawlut think that this arrangement will go a great way effectually to repress groundless appeals, without any risk of checking such as are justly founded, and will place upon the present too unlimited right of regular appeal a wholesome and much wanted restraint, calculated to save the

(C.) No. III.
Madras Judicial System.

time of our tribunals from being uselessly occupied in fruitless investigations, and to relieve the people from their present difficulty in obtaining the execution of right judgment in their favour.

37. Numerous regular appeals are now preferred merely to gain time, and to defer enforcement of the lower court's decree until native ingenuity can devise means to frustrate its execution by the fraud, forgery, and false mortgages hatched in the very precincts of our courts of justice, and it frequently happens that a decree no more confers the property it adjudges than a mere piece of waste paper.

38. In the register's letter of the 20th April last, the Sudder Adawlut submitted to Government a statement, No. 9, accompanying it, of which the following is an abstract, showing the number of decrees fully executed as contradistinguished from those executed only in part for the first half-year of 1839:

		AMOUNT.		
	Decrease.	Decreed.	Recovered.	Relinquished.
Executed fully -	6,344 -	273,492	269,614	12,906
Ditto in part only	3,200 -	290,913	47,478	Due, unrecovered. 242 718
Total - -	9,544 -	564,405	317,092	242,718

39. Lamentable experience has thus proved that in India judicial duty begins rather than concludes with the decision. One-third of the decrees, to the amount of nearly one-half of the amount adjudged, remain after the decision unexecuted. Indeed every contrivance on the part of perhaps the most ingenious and persevering people in the world, is at once set at work, so soon as the decree is passed, to thwart execution, and it is most difficult to discover the clue by which to trace to its origin the native chicane set on foot for this purpose, under the multiform shapes in which it arrays itself. Under such circumstances, experience has shown, that to throw upon any single tribunal the execution of the decrees of the whole of the higher and lower courts is unadvisable; for it would transfer perhaps the most arduous and important inquiries in the judicial department from the officer whose personal experience of the merits and details of each case, and knowledge of the individual characters of each party, enables him at once to detect fraud, to a stranger superintending an inferior tribunal deprived of all these advantages; and a little adroitness on the part of a venal clerk in one of the lowest courts might, under such a system, suffice to nullify the most elaborate judgment of the highest tribunal. Added to this, the very division of labour in the performance of this most arduous duty amongst the respective tribunals will far more aid the speedy execution of decrees, than if the whole were thrown upon a single inferior court, which, the lower it descends in gradation, will be the more crippled in its establishment, and less able, without the entire interruption of its proper judicial functions, to perform the very important work in question. For these reasons, except the decrees of the Court of Sudder Adawlut, which should be executed by the civil judge, the decree of every civil tribunal should, in the opinion of the Sudder Adawlut, be executed by the court which passes the decree; and for this purpose a single nazir with a deputy should be attached to each court, whose duty it should be to execute all decrees whatever under the particular orders of the respective authorities who may pass each, whether it be the civil or assistant judge, the principal sudder ameen, or the sudder ameen. In the detached courts a separate nazir must, of course, be attached to each for the same purpose.

40. The Sudder Adawlut have no objections to offer against the arrangements proposed by the Law Commission from paragraph 36 to 44 inclusive of their letter.

41. In deciding on the measures discussed by the Law Commission from para. 45 to 47 of their letter, it is to be borne in mind that the Supreme Government have recently objected to extend the jurisdiction of the Governor's agent at Vizagapatam, that the Law Commission appear to consider "the present arrangement is not intended to be permanent," and that this court has uniformly

uniformly objected to the transfer to the authority of the Governor's agents of any except the hill tracts in Ganjam and Vizagapatam. The change now to be made for the administration of justice in the long narrow strip of country upon the sea-coast, not included within their jurisdiction, ought therefore, to have reference to the plan contemplated as ultimately to be generally established, rather than to the temporary expedient of such agency.

42. Bearing this in mind, the Sudder Adawlut are unable to suggest any arrangement preferable to that proposed in para. 45 of the letter from the Law Commission, and the accompanying statement, No. 2, therefore, contemplates a sessions judge alone at Chicacole, with two principal sudder ameens detached from him at Itchapore and Vizagapatam respectively, the civil and sessions judge being vested in the talooks around Chicacole, with their powers as well as his own.

43. Should the government take this opportunity of replacing under the code the plains, especially those attached to the zemindary of Vizeanagram, the principal sudder ameen at Vizagapatam might change places with the civil and sessions judge at Chicacole.

44. It will certainly be requisite in Canara to retain the extra assistant to the civil judge appointed under Regulation VII. of 1809, alluded to in para. 49 of the letter from the Law Commission; and the statement, No. 2, provides for this accordingly.

45. With respect to the Court of Sudder Adawlut itself, the judges entirely approve the suggestions contained in para. 59, 60, 64, and 65 of the letter from the Law Commission; and, in order to make a division of labour such as the new system will render indispensable, they have recently passed the order of which a copy is annexed.

46. It remains only to notice the financial result of the proposed arrangements as discussed by the Law Commission, para. 50 to 58 in their letter.

Financial Results.

The Sudder and Foujdaree Adawlut annex a statement, No. 3, showing the probable financial result of the arrangements proposed by them:—

To be a saving of rupees - - - - - -	2,48,702	6	–
Falling below that calculated on by the Law Commission of	2,62,000	–	–
By only rupees - - -	13,297	10	–

The Law Commission, in their estimate of the present establishment, supposed it to include four, whereas it includes only three principal sudder ameens; namely, those at Sirsee, Itchapoor, and Honore, the court of the principal sudder ameen at Cumbum having been abolished some time ago.

In the proposed establishment the Sudder Adawlut suggest an increase of the assistant judges from 12 to 13, two of these being on the increased allowance of rupees 1,750 per mensem; the reduction of the principal sudder ameens from 12 to 10; and instead of 42 sudder ameens, as estimated by the Law Commission, they think that 34 will suffice, as shown in the statement No. 2.

Except for the Tooloovoo language, spoken in a considerable portion of the western coast, and for the Oria, used only under the Governor's agent at Ganjam, it is concluded that all translations will be executed at the presidency. In addition therefore to the saving by the abolition of the provincial courts establishment, a reduction may be made in the native judicial establishments of the subordinate courts in the interior, to the extent of rupees 1,652 per mensem, as shown in the statement No. 4. How much of this establishment will be required for translation by the Sudder Foujdaree Adawlut experience alone can show. But

The following is the amount of the civil and criminal establishments in the courts at present:

	Rs.	as.	p.
Rajamundry	906	12	–
Malabar	1,320	4	–
Madura	998	4	–
Salem	985	–	–
Nellore	1,072	–	–
Combaconum	987	4	–
Bellary	1,028	4	–
Cuddapah	1,090	4	–
Assistant Judge, 218 8 – Canara	1,162	–	–
Chingleput	989	12	–
Chittoor	1,186	12	–
11	11,726	8	–
Average for a Zillah Court	1,066	–	–
Auxiliary Court of—			
Coimbatore	579	4	–
Tillicherry	655	12	–
Vizagapatam	645	–	–
Cochin	466	–	–
Tinnevelly	492	–	–
Trichinopoly	555	8	–
Guntoor	592	–	–
Cuddalore	704	–	–
Masulipatam	591	12	–
9	5,281	4	–
Average for an Auxiliary Court	586	13	–
Principal Sudder Ameen's Court of Sirey	270	–	–
Itchapoor	414	8	–
Honore	568	12	–
3	1,258	4	–
Average for a Principal Sudder Ameen's Court	417	12	–

to prevent any under calculation of it, the full amount is estimated and entered as transferred to it in the last item contained in the statement No. 3.

By the proposed abolition of futwahs also, all Persian moonshees and Persian writers in the interior may be dispensed with; accordingly, the Sudder Adawlut, with reference to these reductions and to the reduced work for English writers in fair Company trials and appeals, propose to fix the judicial establishments in the interior on the reduced scale shown in the statements Nos. 5 and 6 respectively, according as an assistant judge or a principal sudder ameen may be attached to the civil and sessions judge.

Statement No. 3 shows the result of such establishments, both as regards the 10 stations where, according to No. 2, an assistant will be stationed with the civil and sessions judge, and the seven other stations, where No. 2 shows that the aid of a principal sudder ameen will suffice. In regard to Chicacole, where alone the civil and sessions judge will be solitary, the judges have estimated, in No. 3, the same establishment as now suffices for the auxiliary court at Vizagapatam, and they have estimated the establishments for each of the proposed detached courts at their present amount, except that they have taken that for the court proposed to be fixed at Vizagapatam at the same amount as that for Itchapore, and have given the sudder ameen to be detached at Sersee an establishment of rupees 100 instead of 45 rupees per mensem.

It is very likely that, when practically introduced, these establishments will require to be considerably modified, to be increased at some stations and decreased at others, so as to suit local circumstances and peculiar wants; but the aggregate will suffice to cover the expenditure required, and such modifications in detail, it is presumed, will be best left, on the introduction of a new system, to the discretion of this court, in communication with their subordinates; the present object of these estimates is merely to give the Government a general notion of the aggregate financial result of these arrangements.

Though the reduction will be generally as stated in the enclosure No. 3, it is likely to be ultimately still greater. The Sudder and Foujdaree Adawlut have purposely excluded from their present estimate any reduction arising from the discontinuance of the law officers in the four provincial courts, for it is presumed that these officers, like the members of the civil service who may be transferred to the new offices, will personally retain their present superior salaries, even if absorbed as sudder ameens; some of them it is likely may apply for pensions. But amongst them there are individuals of much ability and intelligence still likely to be useful in the public service.

The judges are of opinion that two Mahomedan and three Hindoo law officers in the Court of the Sudder Adawlut will suffice for answering all questions on Mussulman and Hindoo law which may be referred to the presidency from the several provinces, and one of the three Hindoo law officers should be specially versed in the Hindoo law peculiar to the western coast, or that of inheritance in the female line.

Ordered that extract from these proceedings be sent to the chief secretary to Government, for the purpose of being laid before the Right hon. the Governor in Council.

(True extract.)

(signed) *W. Douglas*, Regr.

(C.) No. III.
Madras Judicial System.

ORDER OF THE COURT.

1. THE duty of revising the monthly criminal returns and quarterly and half-yearly civil returns from the several zillah and provincial court stations is now divided amongst the three judges of this court, as noted in the margin; when the new system is introduced, it will admit of still more equal division by each judge taking six of the 18 stations and two of the detached ones, the seventh detached one being added to one of the three.

Acting First Judge, Northern Division, with Honore, Sircy, and Tillicherry.
Acting Second Judge, Southern Division, with Calicut and Cochin.
Acting Third Judge, Centre Division, with Mangalore.

2. It is resolved that the same division of labour do take place as regards the calendars and all miscellaneous petitions.

3. Except the correspondence, which will continue to be considered by all the judges, and the referred trials and civil appeals, which will continue to go to the several judges in rotation, as they become ready for decision, every other paper in each box will under this plan have, in pencil, the name of the judge upon it who is to decide on it.

4. When the judge vested with the duty proposed in paras. 1 and 2 agrees with the court below, no other judge of this court is to interfere; but when he differs, the register is to note in pencil, on the back of the paper or draft, the cases or paragraphs requiring confirmation by a second judge.

5. Such papers of the first to go to the second, of the second to the third, and of the third to the first judge.

6. In the same way the register is to note all general questions or construction of Regulations by any single judge, that these may be considered by all the judges before they are issued.

7. The acting third judge has proposed to delegate to the register in the first instance part of the duty specified in paras. 1 and 2.

8. The court concur with the acting second judge in opinion, that each judge can of course avail himself of such aid as he may think proper; but that it is preferable that the judge himself should, if possible, perform it. The system now proposed however, will allow each judge in this respect to give such orders as he may deem proper to the register, respecting the particular division of which he undertakes the labour.

(True copy.)
(signed) *W. Douglas*, Register.

MINUTE.

Para. 1. AGREEING as I do generally in the views expressed in the proceedings of the Sudder and Foujdaree Adawlut of the 14th ultimo, on the subject of the judicial changes recommended in the Report of the Law Commissioners, dated the 2d of August last, I shall not have occasion to write in any detail on the subject.

2. Some years ago I thought that it would not be safe to try persons accused of heinous offences without the intervention of a committing officer, but I have since changed my opinion.

3. Experience has shown that it is the double investigation, first by the criminal judge, and again, oftentimes at a distant period, by the court of circuit, that affords the opportunity of tampering and buying of witnesses, and that has given rise to a great proportion of the perjury which of late years has been so discreditable to our courts.

4. It is in a great measure the dread of a second journey, and sometimes of a third, and even of a fourth journey to the criminal court, which induces the people on some occasions to deny all knowledge of a case, and which in many instances has caused the ends of justice to be defeated.

5. Our experience of quarterly sessions held at stations where the committing officer and the judge holding the trial are both on the spot, shows that considerable delay still takes place even under such circumstances, and there can be no question therefore, that the plan proposed by the Law Commissioners would afford only a partial remedy of the great evil which has been so much and so justly complained of.

6. As long as this double trial is required, the delays and consequent tampering with witnesses and obstructions to the due administration of justice will

(C.) No. III.
Madras Judicial System.

continue, and I am quite satisfied that there will be less danger of injustice in the trial of the prisoner at once before the tribunal competent to try him, than in continuing the present system of previous examination of the case by a committing officer, vested only with preliminary powers of investigation.

7. I object, however, to the proposition contained in the 7th paragraph of the proceedings of the Sudder and Foujdaree Adawlut of the 14th instant, to authorise the sessions judge to pass sentence in cases which have not been investigated by that officer. The exercise of such a power would, I think, be highly objectionable, and it would lead to the employment of the lower judicatories in taking evidence for the higher, in cases which should be investigated exclusively by the latter.

8. With reference to the 9th paragraph of the above quoted proceedings of the Sudder and Foujdaree Adawlut, it appears to me that as long as the use of the Mahomedan law is continued, it will be necessary to retain a law officer for each court, and the proposition that he shall continue to be associated with the sessions judge upon the trial of persons, and for reference to be made to him on questions of law, is unobjectionable. But the futwah is a great clog and a great source of delay, and though certainly, in some instances, it may be a salutary check upon a negligent judge, the continuance of it is not now absolutely necessary in consequence of the facilities which have been afforded by the publication of circular orders, by the improvement which has taken place in the administration of criminal justice, and by the strict supervision which is now exercised by the Foujdaree Adawlut.

9. The futwah should, therefore, I conceive, be dispensed with, as recommended by the Sudder and Foujdaree Adawlut.

10. I consider the plan of having distinct and separate courts at each station objectionable, because of the double authority and control it will involve, because of the difficulty there would be in making a fair division of labour, which must always depend upon local circumstances, because of the expense it will occasion in providing at most of the stations new buildings for such separate courts, and because the business of the whole zillah will be much better conducted under one acknowledged head than under divided superintending authorities, who would be continually liable to come in collision with each other.

11. It will be preferable, I think, that there should be a civil and criminal court at each Sudder station, with the civil and sessions judge at the head, and with subordinate judicatories attached, as recommended by the judges of the Sudder and Foujdaree Adawlut.

12. With reference to the conclusion of the 28th paragraph of the proceedings of the Sudder Adawlut, dated the 14th ultimo, there can be no necessity for requiring persons to proceed to Mangalore when the special appeals from the sudder ameen of Sircy can be tried just as well by the assistant judge of the proposed superior grade at Honore.

13. I entirely agree with the Sudder Adawlut in thinking that every court should issue its own order for the execution of its decrees, and should dispose of all miscellaneous petitions respecting such execution, subject of course to an appeal to the superior court.

14. The establishments proposed by the Sudder and Foujdaree Adawlut will require modification, and I am not of opinion that the number of law officers in the Sudder Adawlut need exceed one Mahomedan and two Hindoos.

Fort St. George, 3 February 1841. (signed) *John Bird.*

(True copies.)

(signed) *H. Chamier,* Chief Secretary.

MINUTE by the Honourable *W. W. Bird*, Esq. dated the 27th March 1841.

Legis. Cons. 12 April 1841. No. 15. Letter from the Government of Fort St. George, dated the 23d February 1841, on the changes in the Madras Judicial System proposed by the Law Commission.

THESE papers must of course be forwarded to the Law Commission in order that the latter may take into consideration the sentiments expressed by the Government of Fort St. George, and by the Sudder and Foujdaree Adawlut, on the changes proposed to be made in the Madras judicial system.

The Madras authorities are of opinion that the changes proposed by the Law Commission do not go far enough, that the mere abolition of the provincial courts and the substitution of a civil and sessions judge at every zillah station, in addition to the civil and criminal courts already established, will go but a very little way to remedy the evils so justly complained of, and that the changes in question, without doing away to a sufficient extent the inconveniences to which parties are exposed by repeated attendance at the different courts, would involve considerable expense by rendering necessary new buildings at most of the stations, and would lead to much clashing of authority.

Instead, therefore, of having a civil and sessions judge, together with a civil and criminal court at each station, exercising respectively the powers already vested in the civil and criminal courts, and in the courts of appeal and circuit, there should be only one civil and criminal court at each sudder station, with a civil and sessions judge at its head, and that instead of the present civil and criminal courts, subordinate judicatories should be established where necessary, to which cases might be referred for decision by the civil and sessions judge, as circumstances may require.

By this arrangement one intermediate court would be got rid of. The magistrate and the district police, instead of having to bring before that court all cases which they cannot dispose of themselves, to be afterwards sent on to the sessions judge, should the offence be sufficiently serious, would forward them at once to the latter authority, and by this means one set of examinations in all the gravest cases would be dispensed with, to the great satisfaction of the community at large, whose attendance would be proportionately abridged, and to the vast improvement of the public administration, which the fraud and perjury occasioned by the delays in question have brought so much into disrepute.

These suggestions appear to me to be important, and I would recommend them strongly for adoption to the Law Commissioners. I would recommend also, with a view to the relief of the session judges, that the powers of the magistrates be increased. Although the covenanted servants by whom the latter office is held at Madras are often of the oldest standing, the power which they exercise in regard to punishment is not greater than, in Bengal, is ordinarily entrusted to an assistant. They might, I think, be empowered to punish to the extent at present vested in the criminal courts, which, according to Sect. 7, Reg. X. 1816, of the Madras Code, amounts to imprisonment not exceeding six months, with corporal punishment not exceeding 30 rattans, in cases of theft, or in other cases, with a fine not exceeding 200 rupees, commutable, if not paid, to a further period of imprisonment not exceeding six months; so that the entire period of imprisonment under the sentence of a criminal judge in no instance exceeds one year.

To keep up a class of tribunals for the purpose of hearing cases in which no greater punishment can be awarded than that above specified, would seem to be superfluous, and it has, I think, been satisfactorily provided by the Madras authorities, that to make them the channel of forwarding the graver cases for trial to the sessions judge would perpetuate a great proportion of the manifold evils, for the removal of which the abolition of the provincial courts has been deemed on all hands indispensably necessary.

In regard to the futwah, which is the only other important point on which the Madras authorities and the Law Commission are at variance, I do not think that we can at present go farther than by Act No. 1 of 1840 we have already gone, the question being one which concerns Bengal as well as Madras, and cannot conveniently be dealt with until the code of procedure comes under consideration. In the meantime, to avoid the necessity of making translations for the convenience of the Mahomedan law officers, no one should be appointed to interpret the law in a district who is not sufficiently acquainted with the lan-

(C.) No. III.
Madras Judicial System.

guage in which the proceedings of the court he is attached to are usually conducted.

The remaining points of difference do not, in the present stage of the proceedings, require any particular observations.

(signed) *W. W. Bird.*

Legis. Cons. 12 April 1841. No. 16.

(No. 47.)

From *T. H. Maddock*, Secretary to the Government of India, to the Indian Law Commissioners.

Gentlemen,

Legislative Dept.

I AM directed by the Right honourable the Governor-general of India in Council, to transmit to you the accompanying copies of a letter, No. 173, from the chief secretary to the government of Fort St. George, dated the 23d February, and of its enclosures, on the proposed changes in the judicial system of the Madras presidency, also copy of a Minute recorded by the Honourable Mr. W. W. Bird, and dated the 27th ult., in the sentiments contained in which his Lordship in Council generally concurs.

2. A copy of a despatch from the Honourable Court of Directors, No. 2, dated the 20th January 1841, also accompanies this, from which you will perceive that the Honourable Court attach particular importance to the speedy disposal of the whole question, and I am instructed urgently to request that no time may be lost by you in completing your part of what remains to be done in the matter.

I have, &c.

Council Chamber,
12 April 1841.

(signed) *T. H. Maddock,*
Secy. to the Govt of India.

Legis. Cons. 1 November 1841. No. 19.

(No. 176.)

From *T. H. Maddock*, Esq. Secretary to the Government of India, to *W. Elliot*, Esq. Acting Secretary to Government of Fort St. George.

Sir,

Legislative Dept.

WITH reference to the correspondence which has taken place on the subject of the abolition of the provincial courts of the presidency of Fort St. George, now under the consideration of the Supreme Government, I am directed, by the Right honourable the Governor-general in Council, to request that all appointments to offices, which have been recommended by the Law Commissioners to cease, may be made provisionally, and with an understanding that in the event of the abolition of those offices the persons provisionally appointed will not be entitled as incumbents to carry with them after such abolition the salaries of the abolished offices.

2. His Lordship in Council further requests, that these instructions may be considered as applicable to all appointments to such offices made since the date of the last despatch on the subject from the Governor of Fort St. George to the Supreme Government.

I have, &c.

Fort William,
1 November 1841.

(signed) *T. H. Maddock,*
Secy to the Govt of India.

Legis. Cons. 29 November 1841. No. 1.

From the Indian Law Commission to the Right honourable *George* Earl of *Auckland*, G. C. B., Governor-general of India in Council.

My Lord,

ON the 22d April we had the honour to receive Mr. Secretary Maddock's letter, dated the 12th of that month, and having taken into consideration the papers therewith transmitted to us relating to the proposed abolition of the provincial courts of appeal and circuit in the Madras presidency, we now submit to your Lordship in Council the observations that have occurred to us upon

(C.) No. III.
Madras Judicial System.

upon those papers, with reference to our report, dated 21st August, which is discussed in them.

2. The object is to abolish the provincial courts, and to set up others in their stead calculated to do their work more expeditiously, and with less inconvenience to the people, and also at a less cost to the state.

3. The plan recommended in our report is to establish 18 superior zillah courts, with a single judge to each, to take up the whole civil and criminal jurisdiction of the provincial courts, together with the appellate jurisdiction exercised by the zillah and auxiliary courts as at present constituted, and to organise a set of subordinate but independent zillah courts by continuing the courts already established in lieu of zillah courts in some districts*, under assistant judges and principal sudder ameens, and by establishing others of the same class in all the rest, with the same jurisdiction, civil and criminal, as heretofore, except with respect to appeals from sudder ameens and district moonsiffs.

1 To have jurisdiction over two districts, Ganjam, and Vizagapatam, a large part of which is excluded from the jurisdiction of the ordinary courts.
17 Each to have jurisdiction over one district.
18 Courts; 19 districts.

4. In framing this plan we were influenced by the consideration that it was inadvisable at the present juncture, when the whole system of judicature and judicial establishments in India is under revision, in order to a general reform and assimilation, to propose any change but what appeared necessary to effect the particular object in view; we therefore purposely preserved the existing system of judicatories and procedure, and we modified the jurisdiction and the relation of the courts to each other only so far as seemed to be fitting with reference to the new location of those of the superior class substituted for the provincial courts.

Report, 21 Aug. p. 11.

5. The Madras government object to the establishment of distinct and separate courts at each station, and think "it will be preferable that there should be a civil and criminal court at each sudder station, with the civil and session judge at the head, and with subordinate judicatories attached, as recommended by the judges of the Sudder and Foujdaree Adawlut."

From Chief Secretary, 23 Feb. 1841, p. 4.

6. The Honourable Mr. W. W. Bird, who concurs in the sentiments expressed by the Madras government on this point, supposes that the subordinate judicatories are to be established where necessary, and that cases are to be referred to them for decision by the civil and session judge as circumstances may require.

Minute, dated 27 March 1841.

7. But this is not the intention of the judges of the Sudder and Foujdaree Adawlut. On the contrary, with respect to civil judicatories, they intend that the assistant judges and principal sudder ameens shall have a defined and perfectly distinct jurisdiction in original suits, which they are to receive and file without the intervention of the judge. They are to proceed in the trial of these original suits and of appeals referred to them by the civil judge in all respects as if holding distinct courts, issuing and enforcing their own process at every stage, and finally executing their own decrees; and not subject, as far as appears, to any interference on the part of the judge, which he would not exercise in his appellate character.

Proceedings, p. 22.

Proceedings, p. 25.

8. The civil jurisdiction and procedure then of the assistant judges and principal sudder ameens, as subordinate functionaries of the civil judge's court, according to the plan of the Sudder Adawlut, will differ in no respect from what we proposed for them as holding separate and distinct courts.

9. With respect to criminal judicature, it is said, that "subject to certain modifications the Foujdaree Adawlut entirely approve of the suggestions contained in the letter from the Law Commission, from paras. 12 to 23 inclusive." In para. 12 of that letter is proposed the plan of having separate and distinct civil and criminal courts at each station, but none of the modifications referred to relates to the constitution of the courts according to that plan. On the contrary, the general tenor of the observations of the Foujdaree Adawlut upon criminal

p. 20.

* In eight of the 19 districts under the Madras presidency, zillah courts have been abolished under Regulation I. of 1821.

In seven of these, courts have been established under assistant judges vested with the same jurisdiction as zillah judges, under Regulations I. & II. of 1827. In one, a court has been established under a principal sudder ameen, vested with the same jurisdiction, except in special cases, under Regulations VII. & VIII. of 1827. In the remaining 11 districts zillah courts still exist. In two of these, auxiliary courts have been established at detached stations in aid of the zillah courts; viz. in one district (Malabar) two courts under assistant judges; in the other (Canara) two courts under principal sudder ameens.

(C.) No. III.
Madras Judicial System.

p. 11.

criminal judicature implies that they contemplated the courts of the assistant judges and principal sudder ameens as separate and distinct judicatories. Accordingly it is proposed, "that the returns of the assistant judges and principal sudder ameens shall be forwarded, as at present, direct to the Foujdaree Adawlut," and that "direct communication shall exist between the session judge, assistant judge, and principal sudder ameen respectively, and the magistracy or police, in regard to any further evidence that may be required in

p. 5.

the cases under trial." With respect to their jurisdiction, it is intended that all cases shall be sent to them which "they will be competent to try and pass sentence on, under the plan proposed by the Law Commission."

The cases are to be sent to them indeed by the session judge, but that officer is not to exercise any discretion in the matter.

From Chief Secretary to Government of Madras, p. 4.

The proposed constitution of these courts as separate and independent judicatories according to the regulations of 1827, modified as suggested in our report, is objected to "because of the double authority and control it will involve, and because of the difficulty there would be in making a fair division of labour;" and again, because the business of the zillah will be "under divided superintending authorities, who would be continually liable to come into collision with each other."

We do not, however, see any ground for these objections, since we propose to vest the superintending authority exclusively in the judge of the zillah, and in order to make it effectual and to prevent collision, we provide that appeals from sudder ameens and district moonsiffs, which now lie to the assistant judges and principal sudder ameens, shall under the new arrangement be admissible only by the civil judge, and shall not come before the assistant judge or principal sudder ameen but by reference from him; and though the assistant judges and principal sudder ameens are to refer to their sudder ameens a proportion of the original civil suits filed in their courts, yet having referred them they will have nothing further to do with them. If parties are dissatisfied with the proceedings, orders, or judgments of the sudder ameens, in such cases they must apply for redress to the civil judge. The assistant judge and principal sudder ameen, according to our plan, having their attention confined to the business of their own courts, and their duty being clearly defined, we can hardly conceive any occasion to bring them into collision with the judge. Such collision, we apprehend, would be more likely on the plan of the Sudder Adawlut, for although it is intended that the jurisdiction and procedure of these functionaries should be the same as we propose for them as holding distinct courts, yet considering them as subordinate officers of his court, the judge might interfere with their proceedings and attempt to control them extra-judicially and irregularly, and so give occasion for dispute and controversy between them.

With respect to criminal cases referred to sudder ameens by assistant judges and principal sudder ameens, we are of opinion that the authority to overrule * the judgments of those functionaries in such cases should be vested in the session judges, as the appellate authority in civil cases decided by them is proposed to be vested in the civil judges.

* Regulation III. of 1833, Sect. 2.

And with respect to the supposed difficulty of making a fair division of labour, it is only necessary to observe that the division is intended to be made once for all by defining the jurisdiction of the several courts, and it will be the same under either plan.

Our plan is objected to also "because of the expense it will occasion in providing at most of the stations new buildings for the several courts." It is not explained why new buildings will be more necessary if the court of the assistant judge or principal sudder ameen is distinct from the civil and session court, than if with a distinct jurisdiction the assistant judge or principal sudder ameen is attached to that court. The same accommodation would be required in both cases, and the courts may be perfectly distinct though held under the same roof.

And so with respect to the establishment, the assistant judge holding a distinct court, will not need a greater number of servants to assist him in the transaction of his business than an assistant judge attached to the civil and session court exercising the same jurisdiction and observing the same forms of procedure. A certain number of gomashtahs, writers, and peons must be always at his disposal, and if there be a general list of ministerial officers for the

departments

departments under the civil and session judge and the assistant judge, in practice it will be found necessary to make a division, and to appoint some of those officers to one, and some to the other permanently, just as if there were a separate list for each. If one nazir will serve for the execution of the process of both the civil and session judge and the assistant judge attached to his court, but exercising a distinct jurisdiction, there is no reason why he should not serve equally for the execution of the same process when the courts of the civil and session judge and of the assistant judge are separate. So also with respect to the serishtadar, record keeper, &c. But here will be occasion for collision, and whether the assistant judge is to be attached to the civil and session court or not, if he is to exercise a distinct jurisdiction and to execute his own process as proposed, it would seem to be advisable to give him a separate establishment, even if it should involve some more expense, which does not appear certain. Thus in Bengal, though the principal sudder ameen has not a distinct jurisdiction, but is an assistant to the judge for the trial of such suits as the latter may refer to him from his own file, a separate establishment is provided for him.

On the whole, we cannot perceive that any advantage would be gained by making the assistant judge or principal sudder ameen, as the case may be, subject to the civil and session judge in the manner proposed, while it is intended that he should have a distinct jurisdiction and be vested with powers to proceed in the exercise of that jurisdiction independently. It is having a distinct jurisdiction and independent authority to serve its own process and execute its own decrees or sentences that constitutes a distinct and independent court. And as we find that in these essential points there is no difference between our plan and that of the Sudder and Foujdaree Adawlut, we think it desirable to avoid the anomaly of placing the judge of the inferior court in an undefined subjection to the judge of the superior one, by which, as far as we can see, no end can be served.

It is a different question whether it would not be better to have in each zillah a single court, constituted as Mr. W. W. Bird supposes was intended, instead of two separate and distinct courts; that is to say, one court vested with the whole jurisdiction of both the provincial courts of appeal and circuit, and the civil and criminal courts now existing in the districts to be administered by a judge aided, as there may be occasion, by European or native assistant judges, to try such cases as the judge may think proper to refer to them.

Mr. Bird recommends this plan; but with a view to the relief of the session judge, he at the same time proposes to transfer to the magistrate all the cases which he supposes are now cognizable by the district criminal courts, viz. the cases referred to in Section 7, Regulation X. of 1816, punishable by imprisonment for six months, with corporal punishment not exceeding 30 rattans, in cases of theft, and in other cases, with a fine not exceeding 200 rupees, commutable to imprisonment for a further period of six months. The powers of the criminal courts, however, have been extended since 1816, and they are now authorised, for particular offences, to pass sentence of imprisonment for two years, with hard labour. We do not know whether Mr. Bird would give this extended power to the magistrate.

Regulation VI. of 1822.

We have already explained that, in forming our plan for the abolition of the provincial courts, we purposely abstained from entering into the consideration of any changes of the judicial system prevailing in the Madras presidency but what were necessary to effect the particular object in view. We still think it inexpedient, with reference to the work we have in hand, the organisation of a uniform system of judicature and procedure for all India, and while it is still undetermined what the future system shall be, to introduce any changes for which there is not a pressing exigency. The changes we are now considering would essentially alter the existing system, and as they do not appear to us to be necessary for the present purpose, we do not consider it advisable to adopt them.

We submit this opinion without reference to the merits of the changes proposed, but we think it proper at the same time to offer a few remarks upon them.

First, we would remark, that while the tendency of our recent legislation has been to confine the civil jurisdiction of the principal European judges in

(C.) No. III.
Madras Judicial System.

the mofussil to appeals by the plan under consideration, not only would the civil judges have the original jurisdiction of the provincial courts in suits above 5,000 rupees, which, to avoid change, we propose to leave to them for the present, but also the whole original jurisdiction of the existing courts under zillah judges, assistant judges, and principal sudder ameens, in suits under 5,000 rupees. All such suits would be addressed to and filed by the civil judge, and such only as he could not himself investigate, he would refer to the assistant judge or principal sudder ameen attached to his court.

In the Madras presidency it is to be remembered, the assistant judges and principal sudder ameens now exercise an independent jurisdiction in original suits within the limits subject to them, corresponding to that of the judges of the zillah courts. Of this independent jurisdiction the measure proposed would deprive them, and they would be converted into referees*.

With respect to the criminal department, under the Madras system, the jurisdiction of the magistrates is extremely limited, and their power of punishment generally is, as Mr. Bird observes, not greater than, in Bengal, is ordinarily entrusted to an assistant; their chief duty is the superintendence of the police. The magistrate and superintendent of police is also collector of revenue. In constructing the present system, it was thought that the magistrate could not give sufficient attention to the business of revenue and police if a more extended jurisdiction were committed to him. His judicial authority therefore was confined to petty cases, and of these he ordinarily takes cognizance only of such as are beyond the jurisdiction of the heads of police. The following statement shows the number of persons accused of petty offences before the magistrates, joint magistrates, and assistants, and before the heads of police respectively, and the number convicted and punished in the second half of 1838 and the first half of 1839 :—

	Magistracy.		District Police.	
	Number Accused.	Convicted and Punished.	Number Accused.	Convicted and Punished.
Second Half of 1838 -	3,878	1,294	55,226	14,399
First Half of 1839 -	3,656	1,363	53,108	13,412

The magistrate, under the existing system, is also relieved in a great degree from the duty of making preliminary inquiries in cases cognizable by the criminal judges and higher tribunals; for the most part such cases are sent direct to the criminal judges by the heads of district police, as will be seen by the following statement :—

	Magistracy.				District Police.			
	Charges Preferred.		Sent to Criminal Courts.		Charges Preferred.		Sent to Criminal Courts.	
	Cases.	Persons.	Cases.	Persons.	Cases.	Persons.	Cases.	Persons.
Second half of 1838	283	910	131	395	2,591	7,332	1,732	3,932
First half of 1839 -	33	1,143	174	441	2,249	7,089	1,561	3,829

In their proceedings under date the 2d September 1834, the Sudder and Foujdareel Adwaut expressed their apprehension that from the peculiarly detailed

Mr. Secretary M'Sween to Sudder Dewanny Adawlut, 26 August 1833.

* We observe † that when it was in contemplation to revise the Bengal Regulations relating to the native judges, the Governor-general in Council directed that the principal sudder ameens and sudder ameens should be authorised and required to receive and try all original suits cognizable by them without the intervention of the judge.

(C.) No. III. Madras Judicial System.

detailed nature of the revenue settlements under the presidency of Madras, the collectors had far too much business in the revenue department to admit of their adding to it that part of the duty of the criminal judges, which consists in the preliminary investigation of cases cognizable eventually by the courts of circuit, and their preparation for trial before those courts. If they could not discharge this part of the duty of the criminal judges, neither could they, we conceive, go through the trial of the cases which are now subject to the jurisdiction of the criminal courts, without a very inconvenient and injurious interruption to their other business of revenue and police. The number of persons tried by the criminal courts

In the second half of 1838, we observe, was - -	2,634
In the first half of 1839 - - - - -	2,332
In the year - - - - - - -	4,996

Moreover, it is to be borne in mind that, from the offices of collector and magistrate being vested in one person, and from the duties of the collector requiring him frequently to move from place to place, the magistrate's court is by no means so convenient for the people to attend as a court which is stationary; however, such locomotion may conduce to the general advantage, by enabling the magistrate to maintain a more effectual control over the police, and to obtain information which may lead to the detection of crimes, and the correction of abuses by which the people are oppressed.

Lastly, we would remark that it is a question which has been much mooted, and which must be considered and determined before a general scheme for the administration of criminal justice can be settled, whether the officers charged with the superintendence of police should not be altogether divested of judicial authority; and we would submit, that while this question remains undecided, it seems to be objectionable to disturb the Madras system, under which the judicial power of the magistrates is limited, in order that they may be able to give their attention mainly to the management of the police.

Having submitted to your Lordship in Council the reasons for which we do not think it advisable to modify the constitution of the courts of the assistant judges and principal sudder ameens, according to the suggestion of the Sudder and Foujdaree Adawlut, supported by the government of Madras, nor to adopt the essential changes of system recommended in the Minute of Mr. W. W. Bird, we shall now advert to the particular observations and suggestions in the papers before us, which appear to require attention.

With reference to the proposed establishment of a court of permanent sessions in every zillah, for the trial of persons accused of crimes now cognizable by the courts of circuit, it is stated that although this arrangement "will lessen in a material degree the delay previous to trial, it will by no means remedy the existing evil to the extent that its magnitude requires," because of the loss of time that will still be occasioned by the intermediate investigation of the committing officer. It is observed that permanent sessions have been held at the stations of the provincial courts since 1830, and a statement is submitted by the Foujdaree Adawlut of the cases referred to them in 1839, to show that at those stations, notwithstanding this arrangement, the time that elapsed between the arrest and trial of the accused, was on the average 55 days. From this experience it is inferred "that the advantage from the general adoption of the measure thus already partially introduced, will ensue only to the extent of about one-half the result calculated on by the Law Commission."

Proceedings of Sudder and Foujdaree Adawlut, p. 1 to 7. Minute of Mr. John Bird, p. 2 to 6.

We thought that as the great delay which now occurs between commitment and trial would be cut off by the proposed arrangement, the whole period intervening between the apprehension of offenders and their appearance before the judge who is to try them, ought not to exceed 27 days on the average; and looking to the average of three years past, we reckoned that the time saved by this measure would be about 110 days. Now supposing the average of 55 days assumed by the Foujdaree Adawlut, from the experience of one year, to be a correct criterion, there will at least be a saving of 82 days. The result anticipated by the Foujdaree Adawlut is, therefore, by no means so far short of our calculation as would appear from their remark.

Average of three years -	137
Deduct - - -	27
Days -	110

Average - - -	137
Deduct - - -	55
Days -	82

(C.) No. III.
Madras Judicial System.

But we can scarcely admit the average of one year as a just criterion, and it is to be regretted that when the measure in question has been in operation at the stations of the provincial courts during a period of 10 years, the result of it in one only has been stated. The average, we observe, has been drawn from nine cases referred to the Foujdaree Adawlut by the judges holding sessions at the four stations of the provincial courts in 1839, of which six were from one station, and one from each of the other three. The average of these three is 48 days. The time between the apprehension and trial of the accused in each of the six cases from the first station is not given, the shortest was 15 days, the longest 182 days. Now a period of six months is so long a time to be consumed between the initiatory proceedings and the trial, where there is no cause for delay after commitment, that we are led to suppose that in the case referred to, the circumstances were extraordinary, and probably the average ought to be corrected by excluding it on that account. Further, it is to be observed that the referred cases to which the statement submitted by the Foujdaree Adawlut is confined, are considerably less than a fourth part of the whole number tried by the court of circuit.

When, according to their own estimate, there will be a saving on the average of at least 82 days out of the 137 that prisoners are now detained before trial, we cannot agree with the Foujdaree Adawlut, that "the prison intrigue and chicanery which promote recantation, false defences, and perjury in their support, would in no respect be diminished." And we think generally, that their observations as to the inconveniences to which the people are subject in criminal cases before our courts, however just they may be as applied to the present system, would be in a great measure obviated under the proposed arrangement.

There can be no doubt, however, that some time would be saved, and certainly much inconvenience to the prosecutors and witnesses, in the cases tried by the session judges, if they came to them directly from the police or magistracy; and we think that this will be the proper course, when a good system of police under a public prosecutor shall be organised. The plan suggested is to dispense with the intervention of the assistant judge, or principal sudder ameen, in all cases cognizable by the session judges. But it is to be remembered that by this intervention the cases which are sent up by the police, &c. without sufficient proof to support the charges against the prisoners, are prevented from going to trial. We find, on reference to the operations of the criminal courts in cases cognizable by the courts of circuit, that the number of persons discharged for want of evidence is generally greater than the number of persons committed. This plan, under existing circumstances, would therefore at once more than double the number of persons to be tried by the session judges; and they would have a great deal more to do in the cases to be tried from their coming to them without previous preparation by a committing officer. On the other hand, the assistant judges and principal sudder ameens, whose time is in every respect less valuable, would be relieved from a very large portion of the business intended to be assigned to them. The judges, we apprehend, could not do the additional work which would fall to them in the criminal department, without either leaving the civil business in arrears, or transferring appeals in a greater proportion than is desirable to the subordinate tribunals.

	Discharged.	Committed.
First half of 1838 -	765	754
Second ditto -	750	999
First half of 1839 -	1,180	1,168

The question then is simply whether, seeing that not more than half of the cases* sent up by the police and magistracy are found on examination to be supported by evidence which warrants commitment, it is advisable, for the sake of expediting the trial of such cases, to burden the session judge with the investigation of the other half also, by which his valuable time would be so much occupied that he could not give the requisite attention to his civil duties.

If it be determined that all cases cognizable by the session judge shall come to him from the police, without the intervention of the assistant judge or principal sudder ameen, it will be necessary, the judges of the Foujdaree Adawlut observe, "that the session judge should himself perform what may remain to be

Proceedings, p. 6.

* Persons only are mentioned in the statements, but it is presumed that the proportion of cases is about the same.

be done, in order to complete each case for trial;" and they remark, that "the preparation will be more exactly adapted to the trial, both being the work of the same person, who must know better than any other can what parts of the case require further elucidation." If the trial were to be deferred until the case should be completed by such preparation, there would be little relief to the prosecutors and witnesses. But the judges explain that they intend "only what is now often done by circuit judges, and always by criminal judges, sudder ameens, and assistant criminal judges, in cases in which sentence is passed by themselves." And we apprehend that it is not the practice of criminal judges, in cases in which, upon a perusal of the informations received from the police, they think it proper to call for further evidence, to defer the commencement of the trial until such evidence is forthcoming. We suppose, on the contrary, that they enter upon the trial immediately by taking the examinations of the prosecutor and of the witnesses for the prosecution who are in attendance, and allowing them to return to their homes, adjourn the proceedings until the further evidence required is ready. We are of opinion that this is the proper course. With respect to the prisoner's defence, it is ordered that it shall not be recorded until after the evidence for the prosecution has been gone through; under which rule, although the prisoner's witnesses may be in attendance from the first, they must wait unto the end before they can be examined. We think that the courts should have a discretion to prevent this inconvenience.

C. O. Foujdaree Adawlut, 1 August 1835.

The judges of the Foujdaree Adawlut suggest, "that the original informations should be sent up to the judge immediately that they are completed, without waiting, as is now done, for all the parties concerned to accompany them," and that the judge should "communicate direct with the officers by whom the informations are taken," which seems to be a proper arrangement, in order that measures may be taken as early as possible to remedy any defect in the preliminary proceedings, and in the evidence which has been collected by the police.

If, on the other hand, it should be deemed advisable to continue the present process of commitment, in order to prevent the session judge being burdened with the examination of cases sent up by the police on insufficient grounds, we think that some of the delay which now occurs at that stage might be obviated, if the assistant judge or principal sudder ameen were authorised to make the commitment at once, when the charge is borne out by the informations received from the police, and the statements previously made by the prosecutors and witnesses are confirmed on oath before him. When the preliminary investigation has been insufficient, and the informations are incomplete and unsatisfactory, the assistant judge or principal sudder ameen must, of course, take fresh examinations and make further inquiries; but we think that he need not prosecute his investigation further than to satisfy himself that there is probable evidence to sustain the charge, and should then commit the prisoner for trial. The trial should be commenced as soon as possible after the commitment, and should be conducted in the way proposed, on the supposition of the case coming directly from the police.

The Foujdaree Adawlut observe, that the plan of dispensing with the process of commitment "will involve the consequence, that a prisoner once put upon his trial for even the greatest offence, can never again be brought forward for the same crime;" and they remark, that "a greater latitude must therefore be given to the police, as to the period within which proof of the graver crimes is to be completed." But if the judge is authorised to postpone the trial, or to adjourn it from time to time, till the proof which appears to be accessible is obtained, as we suppose is intended, it does not appear to us that it will be necessary to give such further latitude to the police. We do not see, however, why the session judge must necessarily put a prisoner so brought before him on his trial, when, from a perusal of the informations sent by the police, it appears to him, that though they afford strong ground of supicion so far as they go, there is some evidence wanting, and not at present accessible, without which he could not be convicted; in such a case, we think that the prisoner should be discharged without trial, and that his situation in consequence should be just the same as that of a prisoner who, under the present system, is discharged by a criminal court for want of proof sufficient to warrant his commitment.

p. 8.

The Foujdaree Adawlut suggest that "all cases not punishable by the police or magistracy, should go direct from them to the session judge," to be distributed

(C.) No. III.
Madras Judicial System.

buted by him "to the respective authorities, who, under the new plan proposed by the Law Commission, will be competent to try and pass sentence on them, except at the six detached courts, to which the magistracy and police should send such cases as they are competent to decide direct, forwarding to the session judge direct all the grave offences." Even if the process of commitment in cases cognizable by the session judge be dispensed with, it would be better, we think, to make the exception to the above suggestion the general rule, that is, that the magistracy and police should everywhere send direct to the assistant judge or principal sudder ameen, and to the session judge respectively, the cases which fall to their several jurisdictions. At any rate, the session judge, whose time is most valuable, ought not unnecessarily to be burdened by a business of detail of this kind, in which there is no room for the exercise of discretion, and which, therefore, should rather be committed to a subordinate. If the former arrangement be adopted, it should be provided, that when, on a perusal of the previous proceedings, it appears to an assistant judge or principal sudder ameen, that a case sent to him is beyond his jurisdiction, he shall immediately forward it to the session judge, and that the session judge shall pass to the assistant judge or principal sudder ameen in like manner any case sent to him which appears to be within the jurisdiction of the latter. It should perhaps be provided also that the session judge shall have a discretion to send back any case which he thinks has been wrongly transferred to him by an inferior judge.

p. 7. It is suggested by the Foujdaree Adawlut, that when a lower court has tried a case, which on the trial turns out to be one whereon it is not competent to pass sentence, the case should be handed on to the higher court, which should pass sentence without holding further proceedings, "except it deems it necessary to take evidence on points upon which that taken by the lower tribunal may appear defective." This is objected to by the government of Madras, but we think it might be safely allowed, providing that the depositions shall be read over in the presence of the deponents and the prisoner, and that the deponents shall be liable to fresh examination by the court and by the prisoner.

From Chief Sec. p. 3.

From Chief Sec. p. 3. The Madras government are of opinion that as long as the use of the Mahommedan law is continued, it will be necessary to retain a Mahommedan law officer for each court, and they think that he should be "associated with the session judge upon the trial of persons, and for reference to be made to him in questions of law," but that the futwa should be dispensed with.

Report, p. 13. Upon the principle of avoiding all change not necessary for the main purpose in view, we proposed that the session judge should be assisted by a Mahomedan law officer, as the judges of circuit are at present; and we meant that the law officer should deliver his opinion by a futwa, according to the existing rules.

Minute of the Hon. Mr. John Bird. Reg. VI. of 1819. We are sensible, however, that this mode of proceeding "is a great clog, and a great source of delay," particularly under the provision which requires a reference to be made to the Foujdaree Adawlut, when the judge disapproves * of the futwa upon grounds not relating to the personal competency of witnesses. We presume that the Madras government intend that the law officer sitting with the judge as an assessor, should deliver his opinion on every case, and should be at liberty to record his reasons, but that the decision should rest with the judge without a reference to the Foujdaree Adawlut in the event of a difference of opinion between them. In our general scheme of judicature, we shall probably propose that the judges having jurisdiction corresponding to that of the session judges, shall be assisted by assessors, but shall not be bound by their verdict or opinion. We do not apprehend therefore that the proposed arrangement will obstruct the introduction of the plan we have in contemplation; we think rather that it will tend to prepare the way for it. On this consideration, and seeing that nearly a third of the references now made to the Foujdaree Adawlut will be saved by the change recommended by the Madras authorities; your Lordship in Council may perhaps be disposed to sanction its adoption.

The Foujdaree Adawlut suggest as an alternative that the session judge should be empowered "to avail himself of the services of respectable natives, merely

* In the half year from January to June 1839, out of 101 cases referred to the Foujdaree Adawlut, 34 were referred on this account, being about one-third. In the whole year from July 1838 to June 1839, the number referred on this account was 51 out of 176, or nearly as one to three and a half.

(C.) No. III.
Madras Judicial System.

merely as a jury, upon the principle either of Regulation VI. of 1832 of the Bengal Code, or of Regulation X. of 1827 of that for Madras." They say that "they are strongly inclined to the gradual and discretionary introduction of this plan." They do not however explain which of the two systems referred to, which are essentially different in respect to the effect to be given to the verdict or opinion of the assessors, they would recommend. We are of opinion that the principle of Regulation VI. of 1832 of the Bengal Code is preferable, and we see no objection to extending the provisions of Sec. 4 of that Regulation to Madras, to enable the session judges occasionally to avail themselves of the assistance of other respectable natives as assessors in criminal trials, either in conjunction with the law officer or separately.* We believe that in Bengal and Bombay the provision in question has been of little practical use, from the judges not being empowered (as in the Madras Jury Regulation) to enforce their attendance of persons summoned to serve as jurors or assessors, or as members of punchayets. We do not however propose, that in extending the provision to Madras, this defect should be remedied. We think it better that the experiment should be tried at first only on particular occasions, at the discretion of the judge, when he can obtain the voluntary assistance of persons of character and influence, whose example will be likely to dispose others to afford their services when called upon. It is an object to accustom the people to this duty gradually, taking care not to make it burthensome, and aiming rather to render it an honourable distinction to be called upon to perform it. In the code of procedure there will be provisions to make the performance of the duty obligatory, and in the meantime we would leave it optional.

Reg. X. of 1827.

We presume that the suggestions contained in paras. 10 to 14 of the Proceedings of the Foujdaree Adawlut, are approved by the Madras government, and we do not see any objection to them.

Proceedings, Foujdaree Adawlut, p. 10 to 14.

In p. 15 of these Proceedings, it is said, "the Law Commissioners state that there is only one district in which it will be necessary to provide for the trial of cases cognizable by the session judge at a place detached from his own station, viz. Canara, and they propose that the session judge at Mangalore shall go on circuit to Honore at least once in every year;" upon which the judges remark, that as the gaol at Honore, under the present system, is delivered half yearly, the delay now experienced would be aggravated by the arrangement suggested. It will be perceived, however, on reference to our Report, that we proposed that the judge should hold sessions at Honore at least once in every half year.

p. 15.

Report, p. 48.

The judges further observe in this place, that "the Law Commission overlook the fact, that in Malabar also, both Cochin and Tellicherry, at which assistant judges are stationed, are detached to a considerable distance on each side of Calicut, the station of the present zillah and of the future session judge." We did not overlook the fact, that there are detached auxiliary courts at Cochin and Tellicherry, and we had under consideration the question, whether at the latter place, which is the station of the court of circuit, and where consequently permanent sessions are now held, it would be necessary to make a special arrangement for the delivery of the gaol, such as we proposed for Honore; but seeing that it is only 42 miles distant from Calicut, and that the extreme point to the northward, subject to the jurisdiction of the auxiliary court, is not beyond 82 miles, it did not appear to us that the inconvenience that would attend the transmission of cases cognizable by the session judge to Calicut, would be so considerable as to render such a measure advisable. In many districts under the Madras presidency, the distance of the more remote places from the station of the zillah court is much greater than the distance of the farthest point in North Malabar from Calicut. With respect to Honore, for which we thought it proper to propose a special provision, it is to be observed, that it is 110 miles distant from Mangalore, which will be the station of the session judge, and there are places whence cases may come to be tried there, that are upwards of 200 miles from Mangalore.

Instead of the session judge of Mangalore holding a court at Honore half-yearly, as we proposed, the Foujdaree Adawlut recommend that the assistant judge

* In the presidency of Bengal, in 1839, out of 1,085 trials by session judges, in 154 the assistance of natives was had, under this Regulation; in 1840, in 207 trials out of 1,341.

(C.) No. III.
Madras Judicial System.

judge there should be vested with the powers of a session judge. They suggest that an officer of experience and standing in the service should be selected for this duty, and that he should have a superior rate of allowance. They think it will be sufficient to station at Sirsee in Upper Canara a sudder ameen instead of a principal sudder ameen, with power of himself to try and decide criminal cases that are now cognizable by sudder ameens on reference from criminal judges; that is to say, all criminal cases which a criminal judge is competent to decide, excepting cases in which the parties concerned are Europeans or Americans, or native officers of police; providing that cases not adjudicable by him shall be sent by the magistracy and police to Honore, to be finally disposed of by the assistant judge. Upon mature consideration we agree with the Foujdaree Adawlut, that it is advisable to empower the judge of the court at Honore to try all cases generally cognizable by the session judges which shall arise within the jurisdictions of Honore and Sirsee.

Sec. 2, Reg. III. of 1833.

p. 28.

It is proposed by the Sudder Adawlut also to give to this officer the powers of a civil judge for the trial of appeals from the sudder ameens and district moonsiffs subordinate to him. We think this should be done, and we do not see any reason why the original jurisdiction of a civil judge should not be conferred upon him likewise. Being vested with all the powers of a civil and session judge, it appears to us to be fitting that he should be designated by some other title than that of assistant judge, which is appropriated to an officer exercising an inferior jurisdiction. We would suggest that he should be styled Civil and Session Judge of Honore.

With respect to Sirsee, we approve of the arrangement recommended by the Sudder and Foujdaree Adawlut, except as regards the criminal jurisdiction proposed to be given to the sudder ameen; we think that a power extending to two years' imprisonment, with corporal punishment to the amount of 150 lashes with a cat-of-nine-tails, is greater than ought to be committed to a judge of this class, at a detached station, where he is not under the supervision of a European superior. Under Regulation III. of 1833, sudder ameens are empowered to exercise the jurisdiction of criminal judges only in such cases as the superior judges of the courts to which they are attached think proper to refer to them; and the judges are authorised to over-rule their sentences. It is probable that in the exercise of their discretion the criminal judges do not commonly refer to the sudder ameens the higher offences cognizable by them, and that those officers therefore seldom exercise the extended powers conferred upon the criminal courts by Regulation VI. of 1822. We think that if a sudder ameen is appointed to Sirsee, he should be restrained from passing sentences exceeding the limits specified in Sec. 7, Regulation X. of 1816, viz. six months' imprisonment, and corporal punishment not exceeding 150 lashes with a cat-of-nine-tails, in cases of theft; in other cases with a fine of 200 rupees, commutable to imprisonment for a further period of six months. If this is not approved, we think that a principal sudder ameen should be continued at this station; but as the duty is very light, the salary of the office might be less than the ordinary rate, something between that and the salary of a sudder ameen, so as to secure the services of a person of superior qualifications. We are still of opinion that it is not necessary to make a special provision for the trial of cases cognizable by the sessions judge at Tellicherry; we do not therefore recommend that an arrangement shall be made there similar to that proposed at Honore, as suggested by the Sudder and Foujdaree Adawlut.

	Rupees.
Monthly salary of Principal Sudder Ameen	500
— of Sudder Ameen - -	200

Proceedings, p. 17.

We agree with the Sudder and Foujdaree Adawlut, that "at Cochin a European principal sudder ameen will suffice in lieu of an assistant judge," and that he should have the powers proposed. The number of cases committed for trial before the circuit court from Cochin in the year from 1st July 1838 to 1st July 1839, was only four.

Proceedings, p. 19.

With respect to the charge of the gaols, the Foujdaree Adawlut propose that it shall be vested in the assistant judges, as we suggested, but not in the principal sudder ameens, "where European judicial officers exist." We are not quite satisfied with the reasons assigned for this exception, but we think the question is one which it will be best to leave to the determination of the local government.

Proceedings, pp. 25 and 26.

The Judges of the Sudder Adawlut concur in our recommendations with respect to the jurisdiction to be exercised by civil judges, and by assistant judges and principal sudder ameens respectively, in original suits, and appeals

appeals, regular and summary, both when the several courts are at the same station, and when they are at different stations. We have only to observe, that we did not mean that appeals from district moonsiffs should be preferred to the assistant judge or principal sudder ameen at a detached station, except "where the distance would render it very inconvenient for suitors to attend the principal court of the zillah," and we do not think that this exception applies to the parts of Malabar within the jurisdiction of the court at Tellicherry.

Report, p. 32.

With respect to Sirsee, if a sudder ameen be appointed, we think that the appeal from district moonsiffs in that jurisdiction should lie to the court at Honore.

We recommend that all special appeals should be addressed to the Sudder Adawlut. The judges of that court agreeing with us in principle, but doubting the practicability of our plan with the present working power of the Sudder Adawlut, propose to except special appeals from decisions passed on regular appeals by assistant judges and principal sudder ameens, which they think should lie to the civil judge. Certainly there will be a great increase to the work of the Sudder Adawlut, by giving that court exclusive jurisdiction in special appeals; but looking to what is done in the Sudder Dewanny Adawlut here, and in the Sudder Adawlut at Bombay, we do not think there is reason to fear that it will exceed the ability of the court as at present composed.

Report, p. 27. Proceedings, p. 27 to 34.

As the periodical statements do not distinguish the regular and special appeals decided by the zillah judges under the present system, we cannot ascertain exactly what would be the additional labour imposed upon the Sudder Adawlut by the measure proposed, but from the materials before us we may make an estimate which perhaps will not be very far from the truth. The special appeals are distinguished in the statements showing the operations of the provincial courts, and we find that in the second half of 1838 the number of special appeals admitted by those courts was 21. In the same period the number of appeals decided by the courts from which special appeals lie to the provincial courts, was 491. Of this number some must have been special appeals in which the decree was final; allowing for such cases, it may be assumed that the total number of special appeals admitted by the provincial courts was not more that five per cent. of the decrees passed on regular appeals by the courts referred to. The number of decrees passed on regular appeals in the same half year by assistant judges and principal sudder ameens, registers, and sudder ameens, was 641; and supposing the proportion of special appeals to be about five per cent. in these cases also, the number of such appeals preferred may be taken at 32.

By zillah judge	435
By assist. judge, under Reg. VII. of 1809	56
	491

Assistant judges	190
Principal sudder ameens	21
Registers	171
Sudder ameens	259
	641

From this approximative estimate it would appear, that the number of appeals that would be transferred to the Sudder Adawlut would be about 106, or, say, from that to 120 per annum.

Transferred from prov. courts	21
— from zillah courts	32
	53
Half Year	2
Whole Year	106

Adding to the highest number the average of appeals, regular and special, now disposed of annually by the Sudder Adawlut, the total will be 132 per annum to be heard by three judges. This is near the average number of appeals decided by the Sudder Adawlut at Bombay, in which there are generally three judges present, the remaining one being absent on circuit. The average number of appeals disposed of by the Sudder Dewanny Adawlut at Calcutta is about treble. Each judge of the Madras Sudder Adawlut will have to decide about 44 appeals in the year; but more is done generally by the judges of the Sudder Dewanny Adawlut at Calcutta; and by many of them a great deal more, as will appear by the following memorandum of appeals finally disposed of, or opinions thereon recorded in 1837, 1838, 1839, and 1840, by the judges who were present during the whole, or a great part of each year.

Appeals decided by the Sudder Adawlut, Bombay, from 1834 to 1839:

1834	135	1837	58
1835	133	1838	136
1836	112	1839	119
Average	115		

Excluding 1837, in which the number of appeals decided was unusually low, the average is 127.

Appeals disposed of by the Sudder Adawlut, Calcutta, from 1832 to 1840:

1832	221	1837	476
1833	312	1838	203
1834	392	1839	177
1835	794	1840	445
1836	521		
Average	393		

(C.) No. III.
Madras Judicial System.

	1837.	1838.	1839.	1840.
By one Judge (*a*) - -	197	53	(*g*) 50	178
— - - - -	103	(*d*) 52	(*h*) 49	(*k*) 163
— - - - -	93	49	(*i*) 47	114
— - (*b*) - -	70	(*e*) 47	33	(*l*) 96
— - (*c*) - -	63	(*f*) 23	33	56
— - - - -	63	- - -	29	51
				38

(*a*) Present to beginning of August.
(*b*) To the latter end of October.
(*c*) From 12th April to end of October.
(*d*) From 15th March.
(*e*) To the middle of September.
(*f*) Absent one month.
(*g*) From 18th February.
(*h*) From 8th June.
(*i*) From 23d August.
(*k*) From 3d April.
(*l*) From 2d June.

Besides the 445 civil appeals finally disposed of by the Sudder Dewanny Adawlut at Calcutta in 1840, the miscellaneous business was very heavy; viz.

Miscellaneous Petitions, 2,451 - - Miscellaneous Proceedings, 4,680.

The miscellaneous civil business done by the Madras Sudder Adawlut is not shown in the returns, but we apprehend it is comparatively light.

5 judges present through the year.
1 - — - 1½ month.
1 - — - 8 months.
1 - — - 7 months.
8

By the Calcutta Nizamut Adawlut, the number of criminal trials disposed of in 1840 amounted to 725; and orders were passed on 432 appeals. By the Madras Foujdaree Adawlut, in the year from July 1838 to June 1839 (the latest for which we have seen returns), the number of criminal trials disposed of was 102; the number of miscellaneous appeals in criminal cases disposed of by this court does not appear. By the Foujdaree Adawlut at Bombay, the number of criminal trials disposed of in 1838 was 163, and the average number from 1835 to 1838 was 133. The number of miscellaneous petitions in criminal matters disposed of by the same court in 1838 was 432, and the average number from 1835 to 1838 was 350.

We think that the judges should be restrained from admitting special appeals, for such reasons* as are stated in para. 34 of the Proceedings of the Sudder Adawlut, or upon any grounds but those distinctly specified in Clause 1, Sec. 4, Regulation XV. of 1816. We do not understand the suggestion in this para. that, "in lieu of admitting a special appeal to the Sudder Adawlut in such cases," (*i. e.*) in cases where the decree upon a regular appeal is contrary to evidence, in such of them as originate in the decrees of district moonsiffs, the civil judge should invariably refer the regular appeal to his assistant judge, or principal sudder ameen, so that the special appeals should come before himself.

Report, p. 34. In order to save the civil judges as much as possible from business of detail, we proposed that they should be authorized to refer the execution of their decrees to the assistant judges and principal sudder ameens, as the provincial courts now refer the execution of their decrees to the courts below them, and that the assistant judges and principal sudder ameens should likewise be charged with the execution of their decrees of the Sudder Adawlut; the Judges of the Sudder Adawlut, on the contrary, recommend that the civil judges shall Proceedings, p. 39. execute both their own decrees and those of the Sudder Adawlut. We agree with the judges, that to throw upon any single tribunal the execution of the decrees of the whole of the higher and lower courts is unadvisable. But this observation does not apply; for while we proposed to leave to the assistant judge and principal sudder ameen the duty now performed by them, and Report, p. 35. by zillah judges, of executing the decrees of the higher courts, we recommended

* Upon a question whether a special appeal may be admitted when the judgment may appear to be manifestly without or contrary to evidence, the Sudder Dewanny Adawlut at Calcutta held that a special appeal cannot be admitted on such grounds under Sec. 2, Reg. XXVI. 1814, corresponding with Clause 1, Sec. 4, Reg. XV. of 1816 of the Madras Code, which requires that all the facts of the case should be assumed as stated in the decree: Constructions, vol. 1, p. 84. *See* also rule mentioned, p. 81, vol. 5, Reports of Cases in the Sudder Dewanny Adawlut.

mended that they should be relieved from a heavier duty, by rendering the sudder ameens competent to execute their own decrees.

We do not perceive that the officer who tries a case has a material advantage over any other in investigating the independent claims which oppose the execution of the decree passed in it, "from his personal experience of the merits and details of the case, and knowledge of the individual characters of each party." The obstacles to execution generally arise from parties, and out of transactions, in no wise connected with the cause of action in the suit which has been tried and decided; for instance, judgment is given against *B.* for a debt due to *A.*, and the property of *B.* is taken in execution, when *C.* claims it on a mortgage. What advantage will there be to the civil judge who tried the case, from the knowledge gained by him on the trial in the investigation of such a claim? We adhere to our recommendation, because we think it proper that the civil judge should be exempted, as far as possible, from administrative duties, in order that his time may be saved to be employed with more advantage to the public service in the discharge of his judicial functions, and in the very important duty of superintending the proceedings of the lower courts; and because we think it advisable that there should be a local authority competent to receive and decide upon appeals in questions arising out of the execution of decrees of the Sudder Adawlut, and the courts of the civil judges, which could not be if the civil judges were themselves charged with the execution of those decrees. It is to be observed, that the claims which arise in the course of executing such decrees are generally such as, if brought in regular suits, would fall within the jurisdiction of the lower courts, and that they may be the subjects of regular suits eventually. It is further to be observed, that if the zillah judge executed his own decrees and those of the Sudder Dewanny Adawlut, appeals from his orders would lie to the Sudder Dewanny Adawlut, which would add greatly to the work of that court, and burden it still more, probably, than it would be burthened by having the general cognizance of special appeals. We beg to refer, on this subject, to Act No. V. of 1836, and Sec. 8, Act No. XXV. of 1837.

Proceedings, p. 39.

It does not appear to us that there are any other points in the papers transmitted by Mr. Secretary Maddock which require particular notice.

We have the honour to submit to your Lordship in Council a draft of an Act, in which we have embodied the suggestions offered in our former report, with the partial modifications now proposed. It is possible that some points of detail for which provision should be made have been overlooked, and that the draft may be defective in other respects. But if the arrangements expressed in it be approved generally, the Madras government may be requested to revise it, and to propose any amendments or additions that are thought to be necessary to give full effect to the plan intended.

We think it proper to notice, that we have not inserted in the draft a provision requiring session judges to take notes in English of the evidence given on the trials before them, because we think it better that the practice should be introduced as an official rule by an order of the Foujdaree Adawlut in the first instance, preparatory to its being made a part of the regular procedure eventually by law.

Report, p. 62. Proceedings, Foujdaree Adawlut, p. 21.

We also submit a draft of a separate Act for disposing of the causes that may be depending in the provincial courts of appeal at the time when their functions shall cease.

We have left also the annual reports, intended to be made by session judges, to be prescribed by an order of Government, or of the Foujdaree Adawlut.

Report, p. 21. Proceedings, Foujdaree Adawlut, p. 14.

We would suggest, in conclusion, that the title of Assistant Judge and Joint Criminal Judge will not be suitable for the officer presiding in the courts constituted according to Regulations I. and II. of 1827, under the new system. A better title, perhaps, will be, "Subordinate Judge of the Zillah of ———."

The denomination of "Auxiliary Court" will also be unsuitable for the court; it might be designated as the "Court of the Subordinate Judge of the Zillah of ———."

When there is more than one subordinate court in a zillah, the one detached might however still be called an "auxiliary court," and the judge might be styled "Auxiliary Subordinate Judge of the Zillah of ——."

(C.) No. III. Madras Judicial System.

Further, we would observe that the designation of "Native Court," according to Regulation VII. 1827, is not now suitable for courts under principal sudder ameens, since that office is not confined to natives; the proper designation would seem to be "Court of the Principal Sudder Ameen of the Zillah of ——."

We submit this our report for the consideration of your Lordship in Council.

(signed) *A. Amos.*
C. H. Cameron.
F. Millett.
D. Eliott.
H. Borradaile.

Indian Law Commission,
10 July 1841.

Legis. Cons. 29 Nov. 1841. No. 2. Enclosure.

AN ACT for abolishing the Provincial Courts of Appeal and Circuit in the Presidency of Fort St. George, and for establishing new Zillah Courts to perform their functions, and for establishing Courts constituted according to Regulations I. & II. and Regulations VII. & VIII. of 1827, in place of the existing Zillah Courts.

1. It is hereby enacted, that the Governor in Council of Fort St. George be empowered by an Order in Council to abolish the provincial courts of appeal and circuit, and the zillah courts now existing in that presidency, and to establish new zillah courts to perform the functions now performed by the provincial courts, and to replace the existing zillah courts by courts constituted according to Regulations I. and II. of 1827, or Regulations VII. and VIII. of 1827, at his discretion.

2. And it is hereby enacted, that every zillah court established under this Act shall be superintended by one judge, who shall be styled Civil and Session Judge of the zillah.

3. And it is hereby enacted, that the zillah courts established under this Act shall exercise, within the limits assigned to them respectively by the Order in Council by which they are constituted, the same civil jurisdiction as is now exercised by the provincial courts, and shall be vested with the same authority, and shall be subject to the same rules and restrictions as the provincial courts, except as hereinafter mentioned.

4. And it is hereby enacted, that in every zillah in which there is a court constituted according to Regulation VII. of 1827, the zillah court shall take cognizance of the original suits and appeals which by Sections 7 and 8 of that Regulation are reserved from the jurisdiction of such court.

5. First. And it is hereby enacted, in modification of Sec. 9, Regulation VII. 1827, that in all cases in which a principal sudder ameen has occasion to call upon a collector, subordinate collector, or assistant collector, or other European officer of Government, to do anything in any matter before his court, he shall transmit to such officer an extract from the proceedings of the court, containing a brief abstract of the case, and specifying what is required to be done by him, with a letter requesting that he will comply therewith, and that he will return an answer within a certain time; and such officer shall comply with the requisition so conveyed to him, in the same manner as if it had been accompanied by a precept from the zillah judge.

Second. Provided, that if such officer does not comply with such requisition, the principal sudder ameen shall report the case to the zillah judge, who shall proceed thereon as if the requisition had been made by a precept from himself.

6. First. And it is hereby enacted, that appeals shall lie to the zillah courts from all decrees or orders of assistant judges, principal sudder ameens, sudder ameens, and district moonsiffs, from which appeals are now allowable, but such appeals must be preferred within the period of 30 days, to be calculated as prescribed in the existing Regulations.

Second. Provided, that whenever a court is established in any zillah under an assistant judge, according to Regulation I. of 1827, or under a principal sudder

sudder ameen, according to Regulation VII. of 1827, at a place remote from the station of the zillah court, the Sudder Adawlut, with the sanction of the Governor in Council, may order appeals from the decisions and orders of district moonsiffs stationed within the limits assigned to such court, to be preferred to such assistant judge or principal sudder ameen; but it shall be competent to the zillah judge at his discretion to call up to his own court, from time to time, appeals received by such assistant judge or principal sudder ameen, and to dispose of them himself.

Third. Provided also, that the judge of any zillah court may refer to any assistant judge, or principal sudder ameen in the zillah, any appeals from district moonsiffs which may be filed in the zillah court.

7. And it is hereby enacted, that second or special appeals from the decisions of assistant judges and principal sudder ameens on regular appeals referred to them by judges of zillah courts, or preferred to them directly, shall be admissible only by the Sudder Adawlut, under the general rules and restrictions applicable to the admission of special appeals by the provincial courts.

8. And it is hereby enacted, that appeals, regular, special, and summary, from decisions and orders of the zillah courts, shall lie to the Sudder Adawlut under the same rules and restrictions as are applicable to similar appeals to the Sudder Adawlut from the provincial courts.

9. First. And it is hereby enacted, that it shall be competent to a single judge of the Sudder Adawlut to hold a sitting of court on all matters within the cognizance of that court, and to pass orders or judgments in conformity to the Regulations, subject to the following provisions.

Second. On the hearing of any appeal from the decision or order of any court of inferior jurisdiction in any case, regular or miscellaneous, if a single judge of the Sudder Adawlut shall be of opinion that no sufficient ground has been shown to impugn the correctness or justness of such decision or order, it shall be competent to such single judge, without reference to the order of the file, to confirm the same without requiring the attendance of the opposite party, and with or without a revision of the whole proceedings, as the nature of the case may appear to require, and to communicate the order of confirmation, through the court from whose judgment the appeal was made, to the opposite party, with a view to enable such party to take immediate measures for the execution of the decree. On the other hand, if a single judge shall be of opinion that the decision or order appealed against ought to be altered or reversed as being manifestly unjust, or at variance with some Regulation in force, or in opposition to the Hindoo or Mahomedan law or other law applicable to the case, or as having been passed without sufficient investigation of the merits, or as grounded on an assumption obviously erroneous or irrelevant with reference to the points at issue, it shall likewise be competent to a single judge to issue an injunction, pointing out the irregularity, illegality, or other defect apparent in the proceedings, decision, or order appealed against, and requiring that the court by which the same may have been held or passed, shall revise the case, and proceed thereon in such manner as may appear conformable to justice and to the Regulations.

Third. A single judge of the Sudder Adawlut may exercise his discretion in calling for the proceedings of the lower courts, or such parts of them as may appear necessary, and may further order a report in English, or the vernacular language commonly used in the court, as the occasion may render advisable, on any points requiring explanation, prior to passing a determination on the case, or matter in appeal.

Fourth. Provided, however, that if the decree or order appealed against shall have been passed in a regular suit or appeal, after a full investigation of the merits, and the ultimate judgment to be passed on the case may rest on a mere difference of opinion as to the facts or evidence, or on a disputed or doubtful point of law, or construction of any Regulation in force, it shall not be competent to a single judge to alter or reverse such decree or order. In such cases the single judge will be guided by the rules and practice heretofore in force, excepting that it shall be competent to a single judge, of his own authority, to admit a second or

(C.) No. III. Madras Judicial System.

special appeal, if there shall appear grounds for it, under any of the provisions specified in Clause 1, Sec. 4, Regulation XV. 1816.

Fifth. It shall further be competent to a single judge to direct that the execution of any judgment or order passed by an inferior court, in all cases in which that measure may appear to him expedient, may be stayed until a final decision has been passed thereon.

Sixth. Provided, however, that nothing in the foregoing clauses shall be understood to prohibit a single judge, in any case of difficulty or importance, in which he may deem it expedient and proper that the matter at issue shall be decided by two or more judges of the court, from recording his own opinion thereon, and referring the case to another judge.

10. And it is hereby enacted, that the provisions of clause 2 of the foregoing section shall be applicable to the judges of zillah courts, and to assistant judges and principal sudder ameens in appeals preferred to them directly.

11. And it is hereby enacted, that any provisions of the existing Regulations which require inferior courts to furnish the Sudder Adawlut with translations of papers written in the vernacular language of the country, which they may transmit to that court in appeals and other cases, be rescinded.

12. And it is hereby enacted, in modification of Sections 13 and 14, Regulation V. of 1802, that all processes and orders therein described which may issue from the Sudder Adawlut, shall be directed to the zillah courts established under this Act.

13. And it is hereby enacted, that it shall be competent to the judges of the zillah courts to refer the execution of decrees of the Sudder Adawlut, and of their own courts, to the assistant judges or principal sudder ameens subordinate to them, who shall proceed thereon under the rules prescribed in the general regulations applicable to such cases: provided, that an appeal shall lie from any order passed by an assistant judge or principal sudder ameen under such reference, to the zillah court in the first instance, and secondly, a special appeal to the Sudder Adawlut.

14. And it is hereby enacted, that all other processes issued by the Sudder Adawlut, and directed to the zillah court, or originating in the zillah court, shall be served under the orders of the zillah judge by the proper officers of the court.

15. And it is hereby enacted, in modification of Sec. 6, Regulation III. 1833, that the power of suspending sudder ameens from office, thereby vested in the zillah, assistant, and native judges, shall for the future be vested in the judges of zillah courts established under this Act.

16. First. And it is hereby enacted, that all parts of Regulations VI. and VII. 1816, in which the zillah judge is mentioned, shall be understood as applicable to the judges of the zillah courts established under this Act; excepting Sec. 56, Regulation VI. 1816, which shall be applicable to the assistant judges and principal sudder ameens; and all parts of Regulation VI. of 1816, in which the provincial court is mentioned, shall be understood as applicable to the Sudder Adawlut.

Second. Provided, that district moonsiffs may be employed by assistant judges and principal sudder ameens, as well as by judges of zillah courts, in the manner and for the purposes specified in Sections 60 and 61, Regulation VI. 1816.

17. And it is hereby enacted, that when a zillah judge sees reason for calling up, under Sect. 54, Regulation VI. 1816, any cause that may be depending before a district moonsiff, he may refer it for trial either to another district moonsiff or to a sudder ameen.

18. And it is hereby enacted, that when a district moonsiff shall forward to a zillah judge, under Clause 2, Sect. 3, Regulation I. 1829, a suit instituted in his court in which he is directly or indirectly a party, or otherwise personally interested, the judge may refer it for trial either to a sudder ameen or another district moonsiff.

19. And

19. And it is hereby enacted, that the judges of zillah courts may refer to the subordinate assistant judges and principal sudder ameens applications for the execution of decisions of district punchayets, preferred under Sect. 17, Regulation VII. 1816.

20. And it is hereby enacted, that it shall be competent to judges of zillah courts to pass orders of their own authority on complaints preferred under Sect. 11, Regulation VII. 1816, according to Clause 4 thereof.

21. And it is hereby enacted, that the zillah judge shall be competent to receive, and pass orders of his own authority on, complaints preferred under Sect. 27, Regulation VII. 1832.

22. And it is hereby enacted, that Clauses 1 and 2, Sect. 8, Regulation VI. 1816, shall be understood as applicable respectively to the civil and session courts established in zillahs under this Act, with respect to the district moonsiffs, and also as extended by Sect. 13, Regulation VIII. 1816, with respect to sudder ameens.

23. And it is hereby enacted, that Sect. 3, Regulation VIII. 1816, be rescinded.

24. And it is hereby enacted, in modification of Sect. 14, Regulation VIII. 1816, that sudder ameens shall have authority to order execution of the decisions passed by them, according to the rules for the execution of decrees applicable to the courts to which they are attached, and to issue all process relative to the causes and proceedings before them under their own official seal and signature, and to realize fines imposed by them without reference to any superior officer.

25. And it is hereby enacted, that the session judges in the zillah courts established under this Act shall exercise, within the limits assigned to those courts respectively, the same criminal jurisdiction as is now exercised by the judges of the courts of circuit, and shall be vested with the same authority, and subject to the same rules and restrictions, as far as they are applicable and consistent with this Act.

26. And it is hereby enacted, that the said judges shall hold permanent sessions in the said zillah courts, for the trial of all persons accused of crimes and offences now cognizable by the courts of circuit, who shall be committed for trial by the assistant judges or principal sudder ameens subordinate to them respectively.

27. And it is hereby enacted, that Sect. 2, Regulation XIII. 1832, be rescinded.

28. And it is hereby enacted, in modification of Clauses 1 and 3, Sect. 9, Regulation X. 1816, that if, upon a perusal of the depositions given before the magistrate or native officers of police, it shall appear to the assistant judge or principal sudder ameen before whom a prisoner is brought, that there is evidence of the prisoner being concerned in the perpetration of the crime or misdemeanor with which he is charged, and if the deponents confirm their depositions on oath before him, it shall be competent to the assistant judge or principal sudder ameen, without further investigation, to commit the prisoner to take his trial before the session judge.

29. And it is hereby enacted, that the session judge shall commence the trial immediately, and shall take the examinations of the prosecutor and of the witnesses for the prosecution, and the defence of the prisoner and the examinations of the witnesses for the defence, and if more witnesses have been previously summoned and are expected to attend, or if the session judge thinks it necessary after the commencement of the trial to call for further evidence, he shall adjourn the proceedings, permitting the prosecutor and witnesses to return to their houses, unless he shall see special cause to detain them in order to their being confronted with the other witnesses whose attendance is expected.

30. And it is hereby enacted, that, except in cases in which the session judge thinks proper to proceed as authorised in Sect. 32 of this Act, the Mahomedan law officer attached to the zillah court shall sit with the session judge for the

trial of persons charged with crimes now cognizable by courts of circuit, and shall give his opinion upon every case in the capacity of an assessor, and shall answer any questions that may be put to him by the judge on points of law, which opinion and answers shall be recorded on the proceedings; but it shall not be necessary to take a futwa from him in the manner prescribed in the Regulations applicable to the courts of circuit.

31. First. And it is hereby enacted, that if the session judge does not concur in the opinion of the law officer, he shall not refer the case to the Foujdaree Adawlut unless, from the nature of the crime charged, it is necessary to do so under the existing Regulations, but shall pass sentence according to his own opinion in conformity with the Regulations.

Second. Provided, that such difference of opinion between the session judge and the law officer shall be set forth in the calendar of cases disposed of by the session judge, to be submitted to the Foujdaree Adawlut.

32. First. And it is hereby enacted, that it shall be competent to session judges, in the trial of criminal cases, to avail themselves, at their discretion, of the assistance of respectable natives, or other persons, in either of the two following ways: First, by constituting two or more such persons assessors or members of the court, with a view to the advantages derivable from their observations, particularly in the examination of witnesses. The opinion of each of the assessors shall be given separately and discussed; and if any of the assessors, or the authority presiding in the court, should desire it, the opinions of the assessors shall be recorded in writing; or, secondly, by employing them more nearly as a jury. They will then attend during the trial, will suggest, as it proceeds, such points of inquiry as occur to them; the court, if no objection exists, using every endeavour to procure the required information, and after consultation will deliver in their verdict. The mode of selecting the jurors, the number to be employed, and the manner in which their verdict shall be delivered, are left to the discretion of the judge who presides.

Second. Provided, that the law officer may be one of the assessors or jury.

Third. Provided also, that the decision shall be passed by the judge according to his own opinion, whether he agrees with the assessors or jury or not, if the case be one which, under the existing Regulations, it is competent to him to dispose of finally; but if he differs from the assessors or jury, such difference shall be set forth in the calendar.

33. And it is hereby enacted, that it shall be competent to a single judge of the Foujdaree Adawlut, on a revision of the proceedings held on any criminal trial by any court of inferior jurisdiction, to reverse or alter the sentence or order passed thereon, provided such reversal or alteration be in favour of the accused, whether for acquittal, mitigation of punishment, or otherwise.

34. And it is hereby enacted, that if a single judge of the Foujdaree Adawlut, on a revision of the proceedings in a trial held by a session judge, concur in opinion with the session judge, whether for conviction or acquittal, it shall be competent to such single judge to pass a final sentence, except for capital punishment, which, as heretofore, shall, in all cases, require the concurrent opinion of two judges of the court.

35. And it is hereby enacted, that the rule contained in Clause 6, Sect. 9, of this Act, regarding the powers to be exercised by a single judge of the Sudder Adawlut, is hereby declared to be equally applicable to the powers vested in single judges of the Foujdaree Adawlut.

36. And it is hereby enacted, that it shall be competent to the court of Foujdaree Adawlut, on a review of the abstract statements of prisoners punished without reference, to mitigate the sentence passed on any prisoner when such sentence may appear, on the session judge's own showing of the facts, manifestly illegal or too severe, and it shall not be necessary for the court to call for the proceedings in such cases, unless they shall see special reasons for so doing. It shall further be competent to the court in like manner to annul the sentence passed in any case, when such sentence may be in opposition to any law or regulation in force, and to require the session judge to pass a new sentence according to law.

37. And

37. And it is hereby enacted, in modification of Sect. 2, Regulation III. 1833, that the authority to overrule judgments passed by sudder ameens in criminal cases shall be vested in the sessions judges.

38. And it is hereby enacted, that Sect. 24, Regulation X. 1816, Clauses 2 and 3, Sect. 4, Regulation II. 1822, Clause 2, Sect. 5, and Clauses 2 and 4, Sect. 8, Regulation VI. 1827, shall be applicable to session judges.

Second. Provided, that under Clause 2, Sect. 5, and Clauses 2 and 4, Sect. 8, Regulation VI. 1827, session judges shall not, of their own authority, annul or modify the orders of magistrates, but shall refer the cases for the orders of the Foujdaree Adawlut.

39. And it is hereby enacted, that it shall be competent to session judges to receive petitions against sentences passed by magistrates, and to call for the proceedings of the magistrates, and for explanations upon the matter of the petitions, and if it shall appear to them that the sentences complained of ought to be annulled or modified, to refer the cases for the orders of the Foujdaree Adawlut.

40. And it is hereby enacted, that prosecutions against magistrates and their assistants, under Sec. 43, Regulation IX. 1816, shall be instituted in the zillah courts established under this Act.

41. First. And it is hereby enacted, in modification of Sec. 3, Regulation XIII. 1832, that it shall be the duty of the session judge to bring to the notice of the Foujdaree Adawlut any gross misconduct of any native officer of police which may have come under his observation in a case investigated by himself, or which may have been reported to him by a subordinate assistant judge or principal sudder ameen, and which appears to him to deserve the penalty of dismissal, and it shall be competent to the Foujdaree Adawlut to order the dismissal of such officer.

Second. Provided, that the session judge shall furnish a copy of his report upon the case to the magistrate, and the Foujdaree Adawlut shall not pass a final order upon it until the answer of the magistrate, which shall be addressed to that court, has been received and considered.

42. And it is hereby enacted, that it shall be the duty of the session judge to bring to the notice of the magistrate any minor neglects, or omissions, or transgressions of the subordinate officers of police which have come under his own observation, or have been reported to him by a subordinate assistant judge or principal sudder ameen, and such notifications shall be recorded in the periodical returns to the Foujdaree Adawlut.

43. And it is hereby enacted, that it shall be competent to the session judge to report to the Foujdaree Adawlut any neglect or delay on the part of the magistrate, or the subordinate officers of the magistracy, by which the course of justice has been seriously impeded, in cases before himself, or which have been reported to him by a subordinate assistant judge or principal sudder ameen.

44. And it is hereby enacted, that it shall be competent to session judges, assistant judges, and principal sudder ameens to communicate directly with the district officers of police, for the purpose of obtaining all the evidence that appears to be forthcoming in cases in which prisoners have been forwarded by them, charged with crimes and misdemeanors, Sec. 55, Regulation XI. 1816, notwithstanding.

45. And it is hereby enacted, that except as provided in Sec. 49 of this Act, Europeans and Americans charged with offences not punishable by the magistrate, committed within the local jurisdiction of a principal sudder ameen, shall be sent for trial to the session judge, who shall proceed thereon in conformity with the rules applicable to his own court, or to courts constituted according to Regulation II. of 1827, as the case may require.

46. And it is hereby enacted, that in any zillah in which the Governor in Council of Fort St. George deems it expedient to establish the zillah court and the subordinate court or courts under assistant judges or principal sudder ameens at separate stations, it shall be competent to the said Governor in Council, by an Order in Council, to authorize the session judge to take cognizance of all criminal cases subject ordinarily to the jurisdiction of the subordinate courts, as well as cases subject to his own jurisdiction, which shall be sent

(C.) No. III.
Madras Judicial System.

to him by the magistrate or officers of police of such talooks as shall be therein indicated, and to dispose of such cases according to the rules applicable to them respectively.

47. And it is hereby enacted, that in any zillah in which the Governor in Council of Fort St. George deems it unnecessary to establish a subordinate civil and criminal court, constituted according to Regulations I. and II., or Regulations VII. and VIII. 1827, it shall be competent to the said Governor in Council, by an Order in Council, to authorise the civil and session judge to exercise the civil and criminal jurisdiction as signed to such courts, besides the proper civil and criminal jurisdiction of the zillah court, and to take cognizance immediately of criminal cases within his proper jurisdiction as session judge, as they are sent up by the police.

48. And it is hereby enacted, that when the said Governor in Council deems it proper to establish in any such zillah a court under a sudder ameen at a detached station, it shall be competent to the Governor in Council to authorise the sudder ameen to receive and dispose of civil suits arising in the portion of the zillah over which jurisdiction shall be assigned to him, without the intervention of the zillah judge, under the limitation as to amount or value prescribed by the existing Regulations; and also to receive and dispose of criminal cases sent to him by the police of the division subject to his jurisdiction, for which the punishment prescribed shall not exceed the limitation specified in Sec. 7, Regulation X. of 1816.

49. And it is hereby enacted, that whenever the Governor in Council of Fort St. George shall establish a court under a European principal sudder ameen at Cochin, such principal sudder ameen shall exercise within the jurisdiction assigned to him all the powers of a criminal court constituted according to Regulation II. of 1827, and also all the powers of a joint magistrate.

50. And it is hereby enacted, that when civil and criminal courts, constituted according to Regulations VII. and VIII. of 1827, are established at the station of the zillah court under a principal sudder ameen, the zillah gaol shall be under the charge of the session judge.

51. And it is hereby enacted, that when civil and criminal courts, constituted according to Regulations I. and II. of 1827, are established at the station of the zillah court, the zillah gaol shall be under the charge of the judge of those courts; and the session judge shall be vested with authority to visit the gaol, and to pass orders according to Section 32, Regulation VII. of 1802, and Section 7, Regulation X. 1832.

52. And it is hereby enacted, that the subordinate officers and vakeels who shall be appointed to the zillah courts established under this Act, shall be subject to the same rules as are applicable to the subordinate officers and vakeels of the provincial courts.

53. And it is hereby enacted, that the Governor in Council of Fort St. George shall direct what law officers shall be appointed to the zillah courts established under this Act, and shall order the manner of their appointment; and such officers shall be subject to the same rules as the law officers of the provincial courts.

54. And it is hereby enacted, that the Governor in Council of Fort St. George may appoint an assistant judge to any zillah court, to whom the civil judge shall have authority to refer any civil cases which may be depending before him, excepting appeals from the assistant judge or principal sudder ameen of a court constituted according to Regulation I. or Regulation VII. of 1827, and such assistant judge shall be empowered to try and dispose of cases so referred to him under the rules applicable to the civil judge.

55. And it is hereby enacted, that it shall be lawful for the Governor-general in Council, by an Order in Council, to authorize the Governor in Council of Fort St. George, at any time, to change the stations of zillah courts and the limits of their local jurisdiction, and to abolish any of the zillah courts which shall be first established under this Act, and to establish new zillah courts in any parts of the presidency of Fort St. George.

Indian Law Commission, 10 July 1841. (signed) *J. C. C. Sutherland*, Secretary.

(C.) No. III.
Madras Judicial System.

Legis. Cons. 29 Nov. 1841. No. 3.

DRAFT of an ACT for disposing of the ORIGINAL SUITS and APPEALS depending before the Provincial Courts of Appeal in the Presidency of Fort St. George, the Abolition of which is authorised by Act No. —— of 1841.

WHEREAS it is necessary that provision should be made for the disposal of original suits and appeals depending before the provincial courts of appeal in the Presidency of Fort St. George, the abolition of which is authorised by Act.

1. It is hereby enacted, that the Governor in Council of Fort St. George be empowered to appoint a single judge to hold a court in place of each of the said provincial courts at the station of such provincial court, with a special commission to dispose of all original suits and appeals which may be depending before such court on the date on which the said Governor in Council shall order the functions of the provincial courts to cease.

2. And it is hereby enacted, that the judges who shall be appointed for this purpose shall be styled respectively; viz. Special Commissioner for disposing of the causes depending before the late provincial court for the [northern, southern, centre, or western] division.

3. And it is hereby enacted, that every special commissioner so appointed, previously to entering upon the execution of the duties of his office, shall take and subscribe the oath prescribed to be taken by judges of the provincial courts of appeal, before any person who shall be commissioned by the Governor in Council of Fort St. George to administer it.

4. And it is hereby enacted, that the special commissioners shall transfer the original suits on the files of the provincial courts, in which no proceedings have been held beyond the filing of the pleadings and exhibits, to the zillah courts within whose jurisdiction they would fall respectively if they were commenced *de novo*, and such suits shall be tried and decided by the civil judges of those courts, subject to appeal to the Sudder Adawlut.

5. First. And it is hereby enacted, that all other original suits, and all appeals on the files of the provincial courts, shall be tried and decided by the special commissioners, who shall have the same powers as heretofore have been vested in two or more judges of such courts sitting together, subject to the same rules and restrictions, and under the same provisions for appeals to the Sudder Adawlut.

Second. Provided that, in a case of special appeal from a lower court, if a special commissioner differs from the court from whose decision the appeal is preferred, he shall not pass a final judgment reversing the decision, but shall record his opinion, and transmit the record of the case to the Sudder Adawlut, to be laid before a single judge of that court, whose judgment, confirming or reversing the decree appealed against, shall be final.

6. And it is hereby enacted, that the execution of decrees of the special commissioners, and also of the provincial courts, for which process was not issued previously to their abolition, shall be committed to the judge of the zillah in which the suit was instituted; or if the suit was instituted in the provincial court, to the judge to whose jurisdiction the suit would fall if it were commenced *de novo*. The records of the cases shall be transmitted, together with the decrees, to the respective zillah judges, who shall proceed in the execution of the decrees in the same manner as if they were passed by themselves, and appeals from their orders shall lie to the Sudder Adawlut.

7. And the judges of the zillah courts shall proceed in like manner to complete the execution of decrees of the provincial courts under process previously issued, subject to appeal to the Sudder Adawlut.

8. And it is hereby enacted, that from decisions passed by zilla judges, assistant judges, and principal sudder ameens, previously to the abolition of the provincial courts, in cases appealable to those courts, in which the time allowed for appealing shall not have expired at the date of their abolition, an appeal shall lie to the Sudder Adawlut, provided that the petition of appeal be presented to the Sudder Adawlut, or to the civil judge of the zillah in which the original

suit was decided, within one month from the expiration of the period within which it ought to have been presented under the rules applicable to appeals to the provincial courts.

9. And it is hereby enacted, that it shall be competent to the Governor in Council of Fort St. George to authorise the appointment of ministerial officers and vakeels of the courts of the special commissioners, who shall be subject to the same rules as are applicable to the ministerial officers and vakeels of the provincial courts.

(signed) *J. C. C. Sutherland*, Secretary.

MINUTE by the Hon. *W. W. Bird*, Esq., dated 7 August 1841.

Legis. Cons. 29 Nov. 1841. No. 4. Madras Judicial System.

NOTWITHSTANDING the reasons assigned by the Law Commission, in their letter of the 10th ultimo, for adhering to the plan originally designed by them for the amendment of the Madras judicial system, I am still of opinion that the objections urged by the government of Fort St. George to parts of that plan have not been satisfactorily answered, and that the draft of Act submitted for carrying it into effect should consequently undergo considerable modification.

In regard to civil matters, there is but little difference between the two authorities. The government of Fort St. George would, as was done in Bengal on the abolition of the provincial courts, vest in the civil judge the same powers as were previously exercised by the zillah judges in respect to the admission of original suits as well as appeals, while the Law Commission would transfer to the civil judge the admission of all appeals; but the admission of all original suits not formerly cognizable by the provincial courts, and the power of transferring such as are to be heard by the inferior judicatories, they would reserve for the assistant judge or provincial sudder ameen at the same station. This the government of Fort St. George consider, I think on good grounds, as calculated to lead to great inconveniences, and I would propose that the draft should be modified accordingly.

In regard to criminal matters, the difference between the government of Fort St. George and the Law Commission is more considerable. The plan recommended by the latter authority is to establish 18 superior courts, with a sessions judge in each, to take up the whole criminal jurisdiction of the provincial courts of circuit as at present constituted, leaving all the rest of the criminal courts in point of jurisdiction exactly as they are. This is described by the judges of the Foujdaree Adawlut, and I think with truth, as a half measure, calculated to lessen in a material degree the delay previous to trial, but will by no means remedy the existing evil to the extent which its magnitude requires; that in the gravest crimes three examinations of each case would still continue to be held, two of them conducted generally under the same roof; that nothing will have been effected towards diminishing the intrigue, chicanery, recantation, falsehood, and perjury, to which going over the same ground so frequently before different tribunals unavoidably gives rise; and that the public would still be exposed far more than is necessary to those vexations which incline many to submit quietly to be robbed, rather than undergo the protracted attendance and other inconveniences with which our judicial proceedings have hitherto been accompanied.

The Foujdaree Adawlut are further of opinion, that if change is to be made, the improvement should be as effectual as possible, and that the existing obstructions to the administration of justice can only be removed by an arrangement under which a single trial by a European judge shall do the work of the two now conducted by the criminal and circuit courts respectively. They accordingly suggest that all cases not punishable by the police or magistracy, shall go direct from them to the sessions judge, whose duty it will be to distribute them to the respective authorities, who, under the new plan, will be competent to try and pass sentence on the offenders, except in the six detached courts situated at a distance from the sudder stations, to which the magistracy and the police should send such cases as those courts are competent to decide, forwarding to the sessions judge all other graver offences.

It is admitted by the Law Commission, that much time would be saved, as well as much inconvenience to the prosecutors and witnesses in the cases tried by

by the sessions judge, were they to come to him direct from the magistracy or police; and they are of opinion that under a better organised system this course may ultimately be pursued. But they urge that by the intervention of the assistant judge or principal sudder ameen, all cases cognizable by the sessions judge, sent up by the police or magistrate without sufficient proof to support the charges against the prisoners, amounting at least to one-half, are prevented from going to trial, and that to dispense with such intervention would at once more than double the number of persons to be tried by the sessions judge, who would at the same time have a great deal more to do from the cases coming up without being previously sifted and prepared by an intervening authority, and whose valuable time would thus be taken up with a description of work which could be much more advantageously and appropriately performed by an inferior court.

The Foujdaree Adawlut, however, view the matter in quite a different light, and observe, that the sessions judge would then himself perform what may remain to be done in each case as it comes up from the police or from the magistrate for trial, and that great advantage would result from his doing so, inasmuch as he must know much better than any one else what parts of the case require further elucidation, and that this is no more than what is now often done by circuit judges, and always by criminal judges and sudder ameens, in cases in which sentence is passed by themselves, and is even recommended by the Law Commission in cases in which Europeans or Americans are concerned, as well as in all cases tried by the government agents.

The Law Commission propose as an alternative, that instead of allowing all cases not punishable by the police or the magistracy to go direct from them to the sessions judge, the magistracy and the police should every where send direct to the assistant judge or principal sudder ameen, and to the sessions judge respectively, the cases which fall to their several jurisdictions, leaving in the hands of the latter authority no superintendence but what is at present exercised by the circuit court. To this not only the Foujdaree Adawlut but the government of Fort St. George are strongly opposed, being of opinion, for the substantial reasons assigned by both, that there should be a civil and criminal court at each station, with a civil and sessions judge at the head, to which all other judicial authorities in the district should be subordinate.

In this view of the subject, as already stated in my former minute, I entirely concur. It is in fact placing the civil and sessions judges at Madras, as far as circumstances will admit, on the same footing as civil and sessions judges in Bengal, which is the object the Home Authorities appear to desire, and I would suggest that the draft submitted by the Law Commission be altered so as to carry it into effect.

To my proposition for increasing the powers of the magistrates, the Law Commission object that the magistrates, generally speaking, could not give sufficient attention to the business of revenue and police if a more extended jurisdiction were committed to them. I am fully aware that under the presidency of Madras the collectors have far too much business to take upon themselves, in a majority of the districts, the disposal of a greater number of criminal cases than they do at present. But the object I had in view, was not to impose upon them, where it could not be undertaken, any additional labour, but to enable them, by a little extension of their powers, and without any further trouble, finally to dispose of themselves, cases which they must otherwise forward with all the parties concerned to the criminal courts. It appears from the statement submitted by the Law Commission, that in the second half year of 1838, and the first half year of 1839*, nearly half the number of cases which came before the

* Magistracy.

	CHARGES PREFERRED.		SENT TO CRIMINAL COURTS.	
	Cases.	Persons.	Cases.	Persons.
Second Half of 1838 - - - -	283	910	131	395
First Half of 1839 - - - -	339	1,143	174	441

(C.) No. III.
Madras Judicial System.

the magistrates, involving 836 persons besides prosecutors and witnesses, were sent to the criminal courts, and it may be fairly presumed that, had the powers of the magistrates been a little less restricted, many of these cases might have been decided on the spot, not only to the relief of the criminal courts, but also to the great satisfaction of the parties concerned. This restriction too is the more to be regretted when the magistrate is required by his revenue duties, which is often the case, to visit the interior of his district, and he has to send in to the criminal court, perhaps a great distance off, to be re-tried, all persons convicted before him of offences for which 18 stripes with a rattan, or a fine of 50 rupees, and a month's imprisonment, would not be a sufficient punishment; I deem it right, therefore, to urge again my proposition that the powers of the magistrates be increased to the extent originally vested in the criminal courts by Sect. 7, Regulation X. 1816, of the Madras Code, and that for this purpose authority be given in the Act to the government of Fort St. George, to invest the magistrates with such powers whenever the state of business in any district or districts, may render it necessary or desirable.

The only other point to which I deem it necessary to draw attention, is the introduction into the proposed Act of certain clauses for the appointment of assessors. This was not contemplated in the original plan, nor does it appear to have been anticipated or desired by the Madras authorities, and as the principle is entirely new to the natives of this country, the experiment, especially as there is much diversity of opinion on the subject, ought, I think, to be postponed until the general plan for all the presidencies, which the Law Commission have in contemplation to bring forward for the purpose, shall have been fully discussed and decided upon; I propose, therefore, that all the provisions of Sect. 32 of the proposed Act be omitted, and that we content ourselves at present with extending to Madras the provisions contained in Regulation VI. 1832, of the Bengal Code, as recommended by the Foujdaree Adawlut.

In regard to the number and constitution of the different courts proposed to be established in each zillah, I have said nothing, because it is a point on which the Madras authorities must be presumed to be best qualified to judge; but I doubt the necessity, except under very peculiar circumstances, of having two courts in which European judges preside at the same station, and am of opinion that in almost all, a principal sudder ameen might be substituted for the assistant judge. This is universally the practice in Bengal, and there is nothing stated to show that it might not with equal advantage be the same at Madras. It would be attended with a great saving of expense, without, there is reason to believe, any diminution of efficiency, and it would get rid of the difficulty referred to by the Law Commission of determining on a suitable designation for the officer who is to preside in the inferior court, the title of assistant judge or of subordinate judge, auxiliary court, auxiliary subordinate judge, which the Commission suggest, being all equally inappropriate.

The additional draft Act, submitted by the Law Commission for disposing of the causes depending in the provincial courts at the time of their dissolution, appears to me to be unnecessary. All those causes may be disposed of as was done on the abolition of the same courts at this presidency, in the mode provided for by Regulation II. 1833, and the expense of the special commissioners, proposed to be appointed for the purpose of disposing of those causes, be entirely saved.

There remains only to propose, should his Lordship in Council concur generally in the sentiments above expressed, that the papers be forwarded without delay to the government of Fort St. George, with instructions to refer the proposed Act for the consideration of the courts of Sudder and Foujdaree Adawlut, and resubmit it with such alterations and amendments as may appear to that government, under all the circumstances of the case, to be necessary and proper.

(signed) *W. W. Bird.*

(C.) No. III.
Madras Judicial System.

Legis. Cons. 29 Nov. 1841. No. 5. Madras Judicatories.

MINUTE by the Hon. *H. T. Prinsep*, Esq. dated the 25th August 1841.

I HAVE given much consideration to the scheme of tribunals submitted by the Law Commission, and to the objections offered by the Government and Sudder Court of Madras, and I confess I incline to the same opinion as Mr. Bird, and think the plan of the Law Commission for abolishing the circuit courts of Madras may advantageously receive some, if not all of the modifications suggested.

There are, it appears, at present 12 provincial court judges, as many zillah judges, nine assistant judges, and 14 registers, in all 47 civil servants employed in the administration of justice at Madras, besides the magistrates, whose functions being united with those of revenue collector, under the system established by Sir Thomas Munro, a fraction only, and it is to be feared much too small a fraction, of their time and labour can be regarded as given to this important work.

The evils which were found to prevail in the provincial courts of Bengal, exist it would seem also at Madras. As civil courts these judicatories are defective from the rapid changes incident to the number of judges in each court, and to the circuit rotation occasioning frequent absences, which changes prevent any consistency of decision, and allow great facilities for intrigue, while the engrossing circuit and criminal duties occasion also interruptions and delays no less prejudicial. As criminal courts, though the work on circuit is ordinarily well done, still the intervals for holding sessions are of necessity so wide, as to defeat the ends of justice in many cases when the parties are guilty, and always to aggravate the injury of the trial when they are innocent.

For these reasons principally, the provincial courts were abolished in Bengal, and for nearly the same it is now proposed to abolish them in the Madras presidency. A single judge presiding in a superior court of civil and criminal jurisdiction, subject only to the Sudder Court at the presidency, is the form of judicatory proposed in lieu of the provincial courts. Of these 18 are proposed for the entire Madras territory, that is, one for each district, excepting the extreme northern one of Ganjam, from which so much has been severed by the recent appointment of a political commissioner for the Jungul tract, that one judge is considered sufficient for both that district and Vizagapatam (Bysakhputun).

The first question at issue is, whether to constitute these superior district courts as courts of appeal only from decisions by the inferior courts, or to give them also the original jurisdiction of the provincial courts, that is, in all cases for value exceeding 5,000 rupees.

The Law Commission would continue to them the original jurisdiction of the provincial courts, and would further make them the court of general appeal from all inferior judicatories, leaving it to them to distribute their appeals to competent local courts for decision.

I do not exactly understand in what particular manner the Madras Sudder and government would change the original jurisdiction of the civil judges, as derived to them by transfer from the provincial court, but the question seems to be, whether the assistant judges and sudder ameens are to have the original jurisdiction of the old zillah courts, and the same right of trying certain appeals, or are to be mere referees subordinate to the civil judge with extended powers.

My opinion is in favour of giving to the new civil judges the precise jurisdiction of the provincial courts, added to the regulating and controlling authority heretofore exercised by the zillah judges in their civil capacity. I do not hear that there is so much civil business in the courts of Madras, as to render it advisable on that account to relieve the civil judge from such overriding and controlling authority; while it is necessary, I think, with reference to the character of the inferior courts, and their liability to be filled by incapable or imperfectly qualified persons, that the superior judge should have as much power of correcting or preventing mischief as can be given to him.

I gather from the Report of the Law Commission, that it is proposed to leave the nine assistant judges. The Madras government increase the number to 11, besides having two extra at out-stations.

The Madras government propose further, to have 10 instead of three principal sudder ameens, and 31 instead of 28 sudder ameens.

(C.) No. III.
Madras Judicial System.

This is a very considerable enlargement of the number of courts, but not perhaps more than would be necessary in case of the abolition of the registers' courts.

This scheme, however, taking the number of assistant judges at nine, and allowing two out-courts besides, makes provision for the employment of 29 only of the 47 civil servants now employed in judicial duties, and I see no suggestion as to the mode in which the other 18 are to absorbed. Four men, indeed, are to be reserved to bring up the arrears of the provincial courts, and to effect the transfer and distribution of cases and other business, but this is evidently only a temporary duty that ought not to last more than a few months. All the registers, therefore, will be thrown immediately out of employment.

With respect again to criminal justice, the 18 district judges are to exercise all the criminal powers heretofore vested in the courts of circuit; but because the police and chief magistracy are at Madras held always by the collectors of districts, who avowedly have no time to look properly after their duties in that department, an arrangement is proposed that seems to me very anomalous. The collectors are still to be the chief magistrates, they are to have the entire control over the police establishments. They are to receive the reports of crimes and the criminals as sent in from the interior of districts, but are to take no trouble to examine the cases. It is apparently assumed that they are too busy to decide on the important question of the release, punishment, or commitment to higher courts for trial of the persons so sent in, much more to pursue the clue of an intricate case of delinquency, to follow up intelligence of associations for crime, and effectually to protect the community.

The chief magistrate receiving the thana and tuhseeldars' reports is to pass order for this case to be taken or sent to the assistant judge, that to the sudder ameen, and is himself to take no further trouble about them; the officer to whom the cases are so handed over, is to decide and pass sentence if within his competency, if not, to commit for trial to the sessions judge of the district.

The Madras Foujdaree Court propose to abolish this intermediate reference of cases to assistant judges and sudder ameens, and to let the cases go at once to the sessions judge, who would send them down to be investigated and decided by the assistant judge or sudder ameen, or proceed with them himself. Mr. Bird would give to the district magistrate the power of punishing or committing if he think the prisoners guilty, thus compelling him to examine himself into cases.

The only objection that I can find urged to this last-mentioned palpable improvement of the process of trial, so far as concerns the ends of justice, is, that the collectors, being the magistrates, have not the time to investigate criminal cases and commit or release; but it appears to me singular that, making this admission, it has not occurred to the framers of the proposed Madras scheme, that under it there will be a considerable number of civil servants, now filling the situation of register or assistant judge, who will be thrown out of employment, and who might most advantageously for the public be vested with the separate charge of the magistracy in some, if not all of the 19 districts which compose the Madras presidency.

This is precisely the scheme which experience has brought the government of Bengal to establish in a large majority of its districts, and for which the special sanction of the Court of Directors has been solicited for that presidency.

Why, when we are re-casting the judicial establishments of Madras, should this separate provision for the important duties of police and magistracy, which are admitted to be much neglected at that presidency, have escaped the notice of the authorities so as not even to be discussed in any of the papers now before the government.

As far back as 1822–23, in a Minute of Mr. Fullarton discussing the merits of the scheme of Sir Thomas Munro, which he had assisted in establishing, and which had then been in force for several years, the principle was laid down, and the Court of Directors I believe, assented to it, that in allotting administrative duties, the best for the country and for the government would be to assign an educated officer of the superior class, that is, a civil servant in every district to each of the three duties, revenue, magisterial, and civil justice. It was only, he said, because of the insufficiency of the number of officers, and because of the expense, that the three duties were assigned to two officers, the magisterial

magisterial being, under the system of Lord Cornwallis, clubbed with civil justice, and in that of Sir Thomas Munro with revenue functions.

A scheme of re-cast is now proposed, which throws out of employment a number of officers sufficient to provide for a separate magistracy, and which will enable us to employ these officers in the particular branch required without any material addition to the present expense, because all the men excluded from the new appointments being incumbents, will be continued in their old salaries, and the government will have to create duties for them, or seek out for them employment in revenue details, which otherwise would be committed to inferior native officers.

I confess I look upon the scheme of the Law Commission as defective, from its not making provision for separation of the magistracy from the collector's office, and if the expense of maintaining separate officers for this branch as a permanent arrangement should deter the government, I would propose to meet it by abolishing all the assistant judges except those in charge of courts at out stations, whom I would make district judges without sessions powers, leaving nothing intermediate between the district civil judge and the principal sudder ameen.

I am well aware of the difficulty and objections that will be urged on the ground that the mofussil police being mainly under the tuhseeldars, it will not answer to make these serve two masters, and the power of appointing and dismissing officers of this class must of necessity be reserved to the revenue authorities.

All this is very true, and the government is of course not prepared for the expense of maintaining separate thanas and darogahs for the police all over the Madras presidency. But this difficulty I would meet by requiring tuhseeldars to report to the magistrate the naibs or officers of their establishments to whom the police duties were entrusted by them. These officers would conduct their police duties in subordination to the tuhseeldars, and being of their appointment would act well in concert with them. To the separate magistrates I would give the power of dismissing these naibs, and of requiring others to be appointed by the tuhseeldars and reported as in charge, but not that of direct nomination. I would further leave to the tuhseeldars, and to the collectors also, the power of sentence in petty cases, which they now possess; which powers might, I think, advantageously be exercised by many public officers, and resident gentlemen, and landed proprietors, subject to appeal, of course, to the sessions judge of the district, to whom the government would look for the control, under the Sudder at the presidency, of the entire judicial administration of the tract of country within his jurisdiction.

I am afraid that it is only creating delay to suggest this new plan, instead of confining myself to the particular suggestions and differences of opinion that are already before the Government, and that call for decision. I cannot, however, omit the occasion of putting on record my confirmed opinion in favour of having separate magistrates for the charge of each district, whose whole time and anxieties shall be given to the improvement of the police and suppression of crimes. This important duty must, I think, be neglected, if it is entrusted to officers who regard it as secondary.

With respect to the other points, I think it is very desirable that the provincial courts should be abolished, and civil and sessions courts be established in lieu of them, in every district. The Honourable Court of Directors have enjoined this, and whether the change be made specifically on the plan advocated by the Law Commission, or on that suggested by the Madras government and Sudder, to which Mr. Bird inclines, is comparatively of minor importance. If the opportunity be not taken of establishing a separate magistracy for each district of Madras, which I think ought to be done, and might be so at very small, if at any increased expense, I then should prefer in theory the plan of the Madras government and Sudder, in respect to criminal adjudications; but I do not see how the objection of the want of time, because of other duties more engrossing, is to be got over, so long as the police duties of the districts are entrusted to collector magistrates.

With respect to the employment of assessors or juries to assist the sessions judges on difficult and important trials, some provision is absolutely necessary, seeing the classes of persons who may possibly be brought up before the sessions judges for trial. Regulation VI. of 1832 is one of the worst-drawn

(C.) No. III.
Madras Judicial System.

laws in the Bengal Code, and is seldom if it has ever been brought into use; but some corresponding provision is necessary for Madras, and I doubt the expediency of adopting the assessor rules, as contained in Section 32 of the draft. I would have the jury to be substituted for the law officer, at the discretion of the sessions judge; and I would give to its verdict the same precise authority as the present law gives to the law officer's futwah, so as to leave the existing criminal law of the Madras presidency as little changed as possible, until the period shall arrive for recasting the entire law of India.

The change in the locality, constitution, and number of the courts, civil and criminal, need not produce, and certainly does not imply, any change in the administration and forms of justice; and it is much better that the one alteration should be effected under assurances that everything else will remain *in statu*, so that the vakeels and people may not suffer more inconvenience than is inevitable for the attainment of the purpose in view.

25 August 1841. (signed) *H. T. Prinsep.*

Legis. Cons. 29 Nov. 1841. No. 6. Madras Judicial System.

MINUTE by the Right honourable the Governor-general, dated 17th November 1841.

I HAVE carefully considered the propositions before me on this subject, which is no less important than it is pressing, and I have conferred on them with the officers near me, the best acquainted with the circumstances of the Madras presidency; and I now submit suggestions on each point of prominent interest, following in many respects the recommendations of Mr. Bird and Mr. Prinsep, and intended, with the modifications which we may resolve, upon further discussion, to adopt, to furnish hints for such a letter of instruction to the Madras government as may seem most likely to facilitate the disposal of a question so extensive. Upon points to which my remarks and suggestions do not refer, it will be understood that the decision upon the views of the Madras Sudder Court and of the Law Commissioners, whether these be in accordance or at variance with each other, is designed to be left to the local government.

I shall preface my suggestions by a few observations only, in regard to the extent and nature of the Madras judicial establishments, the modification of which is under discussion.

There are at Madras 12 provincial court judges.

There were originally 19 zillah judges in 19 districts. By the new arrangements respecting the hilly tracts of Ganjam and Vizagapatam, the remaining portions of these two out of the original 19 districts, have been formed into one zillah; so that, in the present plan for establishing a civil and session judge in every zillah, only 18 such judges are required.

In eight out of these nineteen districts, the office of zillah judge was abolished in 1821, and an assistant judge substituted in his place. The "assistant judge," though with a minor designation and emolument than the former zillah judge, has yet, since 1827, exercised the same jurisdiction. In one district, in lieu of an "assistant judge," a "native judge," latterly called a principal sudder ameen, was established, who has also exercised the same jurisdiction, except in special excepted cases. Thus the Madras principal sudder ameen, in the same manner as the zillah judge or the assistant judge, can award generally, a criminal sentence of six months' imprisonment, with commutations extending to imprisonment for a further period of six months, committing, like the zillah or assistant judge, cases of a graver kind for trial by the circuit court; and in regard to the particular crimes of burglary, or theft without open violence, he can, equally with the zillah or assistant judge, award a sentence of imprisonment for two years.

There are now, by additional appointments within districts, nine assistant judges and three principal sudder ameens employed in the Madras territories.

The actual establishment is thus:

Provincial court judges	12
Zillah judges	12
Assistant judges	9
Principal sudder ameens	3

And

And these judges of higher jurisdiction have below them,

Provincial court registers	3
Zillah registers	11

(These registers being civil servants.)

Sudder ameens	*31 or 32
Moonsiffs	*98

(District.)

For this establishment it is proposed to substitute (independently of any temporary provision for the disposal of existing arrears in the provincial courts),

Civil and session judges	18
Assistant judges	13
Principal sudder ameens	10
Sudder ameens	34
Moonsiffs	100

Upon this enumeration I would then say,

First, with Mr. Bird and Mr. Prinsep, that it seems highly desirable that we should get rid of the class of "assistant judges" altogether, and that we should introduce the great principle, long well established at Bombay, and nearly everywhere established in Bengal, of making over to uncovenanted judges (native or European) the duties of original jurisdiction, unless in cases reserved on very special grounds, and of confining the European covenanted judges to the decision of appeals, and to the functions of general control.

The great powers heretofore entrusted to the few principal sudder ameens employed at Madras, almost identical with those of the European zillah judges, will have in some measure prepared the way for such a change.

I learn from Mr. D. Eliott, the Madras member of the Law Commission, that he has become desirous to dispense with the restriction proposed in the Report of the Law Commissioners now before us (in conformity with that heretofore placed at Madras upon all judges, covenanted or uncovenanted, excepting judges of the provincial courts), and to give to the Madras assistant judges or principal sudder ameens original jurisdiction in suits as well above as under 5,000 rupees in value, thus bringing the Madras system in unison with that of Bengal and Bombay.

The objection which may be stated to the discontinuance of the grade of "assistant judge" is, that a sufficient number of qualified principal sudder ameens may not immediately be found to take the place of the assistant judges as above said; 23 officers in all, of both the grades, are proposed by the Law Commissioners, and there are as yet only three principal sudder ameens throughout the Madras districts.

On an objection of this nature the local government only can decide. The Madras Sudder Court recommend that seven new principal sudder ameens be appointed, so as to raise the number to 10. I should hope that with a subordinate native judicial service of at least 30 sudder ameens, and nearly 100 moonsiffs, (the last-mentioned being described to me as having been duly remunerated by salaries ranging in three grades, from 100 to 140 rupees a month, and as being of a generally fair character), little difficulty will be experienced in still further enlarging the number of principal sudder ameens; at least, I should confidently trust that it cannot, even now, be found necessary to add, as contemplated by the Sudder judges, to the number of covenanted assistant judges.

On the whole, I would, upon this point, empower the Madras government by law to appoint in each district, under the civil and session judges, assistant judges or principal sudder ameens (both classes of officers exercising the same powers), as may be deemed expedient, and I would instruct that government to enforce universally, with all the expedition that the means at its command will admit, the principle of employing native or other judges taken from the general community, in the subordinate though important jurisdiction here referred to, and of this eventually reserving the covenanted officers for the grade of civil and session judge exclusively.

This

* These numbers obtained in a memorandum from Mr. D. Eliott.

(C.) No. III.
Madras Judicial System.

This arrangement will assimilate the administration of Madras to that of all other parts of British India which are governed by fixed laws, and will, I am persuaded, be conducive alike to efficiency and economy.

2d. On the mode of bringing offenders for trial before the new session judges I feel an insuperable objection to the proposition for sending such cases directly from the police of the interior to those judges, without a previous sifting and arrangement of the evidence by another responsible party, and a regular commitment for trial, upon specified grounds, after such preliminary inquiry.

The Madras Sudder Court remark in support of this proposition, that, 1st, "It will bring higher qualifications to bear upon the preparation of the cases; and, 2dly, the preparation will be more exactly adapted to the trial, both being the work of the same person, who must know better than any other can know, what parts of the case require further elucidation for the full satisfaction of his own mind in the discovery of the truth."

But to me it appears obvious that this preparation of a case, involving the detection and pursuit of traces and suspicions of guilt, the active conduct, in fact, of a public prosecution, is wholly inconsistent with the calmness and impartiality requisite in a judge. These indispensable qualities on the judicial bench I would never, in this manner, put in hazard; the expedition which can be gained only at the risk of their loss would, in my judgment, be an expedition subversive of the first securities for justice.

The utmost that it seems to me the session judge could properly do towards causing deficiencies of evidence to be supplied is, by quashing the commitment, to remit a case, for that purpose, to the prosecuting officer, or, in rare instances, to cause a particular witness, who had been previously named, and whose evidence might be clearly and unquestionably essential, to be summoned before himself; such a procedure I understand to be usual in India judicial practice, though I apprehend that even this very guarded usage would be esteemed beyond the proper functions of a judge administering English law.

It is true that, as stated by the Madras Sudder Court, the course to which I am so decidedly opposed is now followed in cases coming for sentence before the Madras criminal and assistant judges, or principal sudder ameens, and before the magistrates who possess an extensive criminal jurisdiction in Bengal; but this union of prosecuting and judicial powers, to the degree to which it is carried, has always, I had thought, been regarded as a very lamentable defect in our Indian jurisprudence, and ought to be pointed out, not as an example to be imitated with a still more important description of trials, but as an error to be rectified at the earliest possible opportunity.

It is important to note that, as a consequence of the proposition for sending up cases directly from the police to the session judges, the Sudder Court at Madras observes, "a greater latitude must necessarily be given to the police as to the period within which proof of the graver crimes is to be completed;" that is, the wholesome restriction on the mofussil police, as to the time for which they may detain alleged offenders within their own custody, is to be abandoned. This result of the plan would seem to be, of itself, nearly a conclusive argument against its adoption.

Para. 8, of Proceedings, 14 Jan. 1841.

Comparatively little delay now arises in Bengal from sending up the commitment of a magistrate to the session judge at the same station, and we may be well satisfied if no greater delay should hereafter be incurred in the Madras districts.

In addition to the objections I have urged, upon higher grounds, against sending up cases for trial to the session judges without a previous inquiry and commitment, the Law Commissioners, as Mr. Prinsep remarks, are of opinion that the session judges could not undertake the mass of duty to be thus thrown upon them, without neglecting their functions of decision and control as civil judges.

I would assume then, upon these grounds, that there is to be a commitment in cases brought before the sessions courts, and would direct all attention to the proper determination of the officer in whom the duties of investigation and arrangement, connected with a commitment, may best be vested.

It is a peculiarity of the system in force at Madras, that the commitment to the higher court is there made, not by the magistrates, or by any officer exercising the powers of magistrates, but by a lower grade of judicial court, that is, as has been before said, by the criminal judge, or assistant judge, or principal sudder

sudder ameen. I should think it clearly better, on principle, that the commitment, involving intimate intercourse with the police and some efficient control over it, should be the act of some officer connected with the magistracy of the country than of any separate court, and the Law Commissioners also look to the eventual establishment of the office of public prosecutor for this duty. They point, however, to such a measure as a part only of such a general revision of all establishments as may not be practically undertaken for very many years to come.

The rule laid down in respect to commitments at Madras, is the same as that established in Bengal, namely, that they are to be made, not according to English practice, merely upon *primâ facie* sufficient informations or probable evidence, but strictly in no case "without a reasonable probability of conviction before the court of circuit," and after investigating fully the facts of the case, and a discretionary decision as to taking evidence on behalf of the accused.

Sec. 2, Reg. XIII. Madras Code, 1832.

The Law Commissioners considering it necessary to save the session judges from being borne down by the mass of work which would come upon them if commitments were entirely discontinued, and yet willing to throw upon them as much as they can undertake, recommend that the committing officers should confine themselves to requiring only *primâ facie* or probable evidence of guilt. I am very doubtful, however, of the expediency of sanctioning such a return to* former usage. It seems to me very desirable that the proceedings of the lower officers should be extremely careful and nearly complete, and that the time of the higher courts should not be taken up, excepting with cases in which there may be sufficient reason to anticipate a conviction.

My suggestion to meet the exigency would be framed upon that offered by Mr. Prinsep, and to this effect, that a number of officers of sufficient standing (these appear to be three provincial and eleven zillah registers, to be thrown out of employ by the change of judicial system, and therefore available for the purpose,) should be attached to the magistrates and collectors of districts, to aid them, especially in the police department, and to be charged with the preparation of commitments. This proceeding would be quite analogous to that followed in Bengal, where, on the abolition of registerships, the office of joint magistrate and deputy collector was created. A change of the Madras system of administration so radical as that of entirely separating the magistracy from the collectorship, I do not propose to discuss here, as such a discussion would only, I feel, prolong indefinitely the delay which has already occurred in acting on the repeated orders of the Honourable Court respecting the Madras judicatories. But the new joint magistrate at Madras (or the new officer to be appointed for the purpose, under whatever designation may be there preferred) will, by being in constant communication with the magistrate, and by being able to resort more easily than the court of the criminal or any other judge can do, to his influence and authority, will, I apprehend, have decidedly better facilities than now exist for stimulating and guiding the police in their duties of investigation. It might perhaps, also, I may in this place remark, remove a difficulty which has been raised in these discussions if the direct supervision of the gaol were principally vested in this new officer, so that the functions of the session judges in respect to gaols might be strictly those of inspection and control.

I trust, from the inquiries which I have been able to make here, that the adoption of this suggestion will not be found very difficult. If unforeseen obstacles should oppose it, the Madras government should then be requested to state what other plan seems to them the best for the proper conduct of the business of committing offenders for trial. I fear that the tuhseeldars and ameens of police in the Madras territories, though fairly paid and generally trusted officers, are not fit to be charged with the duty of committing offenders for trial on their own responsibility.

As a means of lightening the labours of the officers with the powers of criminal judges, Mr. Bird has proposed that the powers of the magistrates in Madras, which do not at present exceed those of an assistant in Bengal, should be raised to that of awarding imprisonment for six months, with a commutation for

* The present rule of a full inquiry before commitment was introduced in Bengal by Reg. VIII. 1830; in Madras by Reg. XIII. 1832.

(C.) No. III.
Madras Judicial System.

for fine to another six months' imprisonment, so as not to exceed a year's imprisonment in all. I think that this proposition might be adopted, if the local government should consider it indispensably necessary to their arrangements, without seriously violating the principle which forbids the union of prosecuting and adjudicating powers in the same officer; for, practically, in cases falling within this limited amount of punishment, the prosecution is conducted entirely by the police of the interior, and the magistrate would seldom do more than pass sentence upon the evidence sent before him. But I would not any further extend the judicial powers of magistrates, the general restriction of which at Madras is accordant with those sound maxims of jurisprudence, of which we must seek to enforce the observance as rapidly as we can throughout our territories. Upon the particular proposition and the general question to which this paragraph refers, I would specially invite the remarks of Mr. Amos, with reference to the powers of judicial punishment granted to magistrates by English practice.

The native judges at Madras have long been trusted with powers in criminal cases to a degree which I have much wished to see imitated in Bengal. I am entirely persuaded that the employment of native judges in the duties of criminal as well as of civil justice, is the only ground upon which we can hope to introduce a permanent and efficient reform of the former branch of our administration. Of the powers of principal sudder ameens at Madras, co-extensive with those of criminal judges, I have before spoken; and by Regulation III. of 1833, of the Madras Code, the sudder ameens are authorised "to exercise the powers conferred upon criminal judges," excepting only in cases committable for trial before the courts of circuit, and subject to the check that their judgments may be over-ruled (as those of a joint magistrate may be by a magistrate in Bengal) by those judges. As far as I can learn, the use of this jurisdiction by sudder ameens has been beneficial. I would invite the Madras government to consider whether, to the extent, at least in the first instance, of the power of imprisonment for a month possessed by our assistant magistrates, the district moonsiffs may not also be most usefully vested with criminal powers. It is to be remembered that it is of the first importance to give speedy justice on the spot in as many cases as possible, and certainly in cases of this minor class, which will otherwise be excessively harassing to prosecutors and witnesses, and that this object can only be attained by using the fixed local courts of the moonsiffs. I am aware that the tuhseeldars, and other heads of Madras district police, have now certain minor powers of punishment, as specified in the margin*; but these might be either taken away or allowed to remain, consistently with the somewhat increased jurisdiction proposed for moonsiffs, as the Madras government may think right.

Sec. 2.

It remains to notice more briefly the other points raised by these papers, on which some remark seems necessary. Of these, are,

3dly. Disposal of existing arrears in the provincial courts.

On this point the Law Commissioners propose to retain temporarily the services of four out of the twelve provincial court judges for the decision of the cases on the files of these courts. Mr. Bird thinks this measure unnecessary, and would transfer the cases, as was done in Bengal, to the file of the Sudder Court. It is to be remembered on this subject, that the transfer of the provincial court arrears to the Bengal Sudder file, certainly caused great inconvenience for a time in the Sudder Court, and that the Madras government may not be able immediately to provide for all the provincial court judges as civil and sessions judges of districts, in which case the employment of some of them in the disposal of these arrears may be certainly advantageous. I would refer the question, as one of local convenience and arrangement, to the Madras government.

4thly. Filing of original civil suits and distribution of criminal cases for trial.

The Law Commissioners and Madras Sudder Court appear to unite in wishing that civil suits and criminal cases should be, according to their degrees, brought as

* For thefts not exceeding five rupees, ten days' confinement, with labour. For other trivial offences, fine of three rupees, or three days' imprisonment.

as much as possible directly before the several classes of tribunals competent to try them. Mr. Bird is rather favourable to the plan of having all such suits and cases preferred in the first instance to the civil and sessions judges of districts, who would refer them, as they might think fit, to the different sub ordinate tribunals. I am inclined here to side with the Law Commissioners and Madras Sudder. It is already the practice at Madras that cases should, for the most part, be taken at once to the courts competent to try them. I do not see grounds for discontinuing that practice, especially as, in the revision of the Bengal Regulations, which was contemplated under the care of Mr. Millett, it was decided to abandon the contrary system, which prevails to a great extent in this presidency.

5thly. Execution of decrees.

I am disposed with the Law Commissioners to give a discretion by law which shall admit of the decrees of the civil and sessions judges being executed by the courts below them. It may often be very desirable to employ the inferior courts in the execution of duties of this description.

6thly. Special appeals.

I am inclined also with the Law Commissioners to keep the decision of special appeals as much as possible to the Sudder Court itself. It is evident that greatly less business is now performed by the Madras Sudder judges, than that which is disposed of by the Calcutta Sudder judges; and want of due leisure on the bench at Madras is not therefore much to be apprehended. It may be right to communicate to the Madras authorities the draft of a Special Appeal Act, lately proposed for the Bengal presidency, and to request their opinion on the adoption for Madras, either of that draft, or of any modification of it which may be submitted to us by the Law Commissioners, from whom an immediate report on the subject is expected.

7thly. Trial by assessors or jury.

Perhaps some misapprehension exists in the previous remarks recorded on this matter. The section (the 32d) of the draft Act prepared by the Law Commissioners, does not, I think, go beyond extending to Madras the Bengal Regulation VI. of 1832, a measure to which all authority appears favourable. That section may probably, therefore, be in substance approved by the Council and by the Madras government.

8thly. Financial result.

I observe that the saving estimated upon the execution of the arrangements now under discussion, as they were at first intended, was about two and a half lacks of rupees per annum. I would request from the Madras government a clear statement of the saving which will arise from the modified plans to be now referred to them, including the general employment of principal sudder ameens in the place of assistant judges, and the addition of officers with powers analogous to those of our joint magistrates to the establishments of the magistrates and collectors.

I do not find from my notes that there are any other topics to which I need particularly refer. I would, in making the communication which may be agreed upon to the Madras government, request of that government to have a revised draft of Act prepared, upon the principles to be explained to it, with such addition of detailed provisions as may be suggested by the draft of the Law Commissioners, or as may occur to the Madras authorities, such revised draft to be submitted to us, together with the draft of the Commissioners, in a comparative statement, showing, section by section, the differences between them, and the grounds for those differences, set forth as fully as the nature of each section may require.

I may use this opportunity to suggest, that it may be of advantage to communicate to the Madras Government the rules which are in force in Bengal for the examination of candidates for moonsiffships, and for the strict promotion of native judicial officers from the grade of moonsiff to that of principal sudder ameen. These rules may supply hints which may perhaps be found useful.

(signed) *Auckland.*

(C.) No. III.
Madras Judicial System.

Legis. Cons. 29 Nov. 1841. No. 7. Madras Courts.

MINUTE by the Honourable *A. Amos*, Esq., dated 20th November 1841.

1. THE first point for consideration is the accomplishment of a system, according to which all original civil jurisdiction shall be entrusted to uncovenanted principal sudder ameens, or sudder ameens and moonsiffs acting under them.

2. I think that this is a very desirable end to have in view; but it appears to me that in some respects we are pressing it a little too strongly on the local government. Mr. Elliot informs me, that if our recommendations were to have immediate effect to any great extent, the consequence would be, that a considerable number of covenanted servants would be thrown upon unemployed salary, and thus no great saving would be obtained, whilst the original civil business would be transacted by inferior agents. Whether this apprehension be well founded or not, must be obvious to the Madras government.

3. In pressing the accomplishment of this system, we should attribute some weight to the circumstance, that the generality of principal sudder ameens must be more incompetent than covenanted servants to deal with questions of English or general law, which may often come before them, and for the decision of which they will be the sole original tribunal; and what is of more moment, even the native community have much less confidence in the integrity of their countrymen than in that of covenanted judges. Upon the general principles of human nature, I should feel more secure of the impartiality of a judge in the covenanted service of the Company, than of another European who had not received the like education, was not bound by the same ties, and who was not looking forward to the same prospects. However, I only make these remarks in a cautionary spirit, for I agree that the system, as stated in the first paragraph, is that to which we ought, though cautiously, to approximate, notwithstanding the risks and inconveniences with which it may be attended.

4. The above system is rendered much more simple by taking from the civil and session judge all original civil jurisdiction whatever, and all business of reference to the principal sudder ameens.

5. Secondly. With regard to special appeals, I expect that the Law Commission will, in the course of the present week, send up a draft Act for special appeals applicable to the three presidencies, and of which the principle shall be, that special appeals shall be disposed of by the sudder court; the practical difficulty to be overcome is not to overburthen the sudder courts, and, in a word, to avoid this, to separate the law from the fact, and to send the law up, without the details of evidence, for revision.

6. Thirdly. With regard to commitments, I am in favour of not sending cases for trial to the superior court, unless when they are ready for hearing; and giving to the committing authority a power of discharging complaints which he deems to be clearly unfounded.

7. An assistant magistrate, for the purpose of commitments, is likely to work well; he will communicate more conveniently with the magistrate and police authorities than would be the case with the principal sudder ameens; and as principal sudder ameens have a considerable extent of criminal judicial power, it may be well to keep it apart from the power of commitment. It is to be observed, however, that if this alteration be made in the scheme of the Law Commissioners, a considerable additional expense will be incurred.

8. The magistrate should have a power of commitment to the superior criminal court, independently of the assistant magistrate.

9. It may deserve consideration, whether the assistant magistrate should not commit to the principal sudder ameen as well as to the sessions judge; the same objections apply, only in a smaller degree, to the police sending in their cases to the principal sudder ameen, who performs the double operation of preparing and trying the cases, which is objected to as regards the sessions judge. The extent of criminal jurisdiction given to the principal sudder ameen is not limited merely to those cases in which the inconveniences attending a commitment might operate as an encouragement to crimes.

10. Fourthly.

10. Fourthly. With regard to the judicial powers of magistrates, I think the power of the magistrate to punish crimes might be conveniently extended. The magistrate will be a preferable agent for trial to the principal sudder ameen, especially so long as cases do not go by commitment to the principal sudder ameen. It is not proposed to give to the magistrate even the power of punishing to the same extent as that exercised by the principal sudder ameen. I see no reason for this difference, so long as cases do not go by commitment to the principal sudder ameen. I think that magistrates, and perhaps the assistant magistrate also, should have some judicial power, say to the amount of six months' imprisonment. This is doubtless an infringement of the salutary principle of keeping apart the functions of police and judicature; but I apprehend there is a large class of minor criminal offences which cannot otherwise be so effectually repressed.

11. Most probably the Madras authorities will inform us, that we must not make the duty of trying offences imperative upon magistrates, if we enlarge their judicial powers in criminal cases. We may probably be told, that we should reason erroneously, if we assumed that the duties of a collector (acting also as magistrate) did not, in the Madras presidency, engross much more of his time than they do in Bengal; and although the Madras magistrates can conveniently manage police business, yet that any considerable addition of judicial business would be impracticable.

12. As to the separation of the offices of collector and magistrate, this important question may be more conveniently considered on a future occasion; for in the Madras presidency, according to the ancient customs of the country, the revenue officers have, from time immemorial, been the police officers; and in separating the collector from the magistrate, we should have further to reconstruct each department entirely.

13. Fifthly. With regard to the criminal judicial powers of moonsiffs, a fixed and a proximate tribunal are matters of such vital importance in criminal procedure, that I am disposed strongly to favour the experiment of conferring some powers of criminal judicature on the district moonsiffs. They will, of course, require to be very strictly watched. As I understand they are, at present, very fully engaged with their civil business, it may be necessary to add largely to their number. Mr. Elliot thinks that sudder ameens might be got rid of, and their duties entrusted to moonsiffs, which would be a pecuniary saving.

14. I do not think it necessary to advert, on this occasion, to any other parts of the subject (some points relative to the manner in which the subject of appeals to the Privy Council is connected with these questions, will be noticed in the forthcoming Report on special appeals), but will add a few remarks on the Report of the Law Commission. The attention of the Commissioners was exclusively confined to the suppression of the provincial courts, effecting at the same time as little change of system as possible beyond the attainment of that object. They reserved any further change until it could be made general, provided it could expediently so be made, for all the presidencies.

15. The Minutes of Council have gone deeply into the code of procedure, upon various points which have not been reported on by the Law Commission. I am glad, however, that this course has been taken, because I have found that the most expeditious way of our obtaining benefit from the labours of the Law Commission is to lead the way by a legislative Act embracing some comprehensive section of procedure, and requiring the Law Commission to report upon it within a given time. With this view, I presented to Council the draft Acts upon the examination of absent witnesses, special appeals, and the limitation of actions; and by such means, in another week, I think it may be said that these important sections of the code of procedure will have been finished for all the presidencies by the Law Commission. The present papers will, in this point of view, be still more useful; for what, from my first joining the Commission, I have been most anxious to obtain, is a general chart or scheme which shall state what number, and what kinds of courts, civil and criminal, shall be constituted; which shall have appellate, and which original jurisdiction; what shall be the respective extents of the jurisdiction in point of amount or locality; what shall be the qualifications for judges, by whatever name called; what shall be the functions and limits of jurisdiction of magistrates; what authorities shall have

(C.) No. III.
Madras Judicial System.

control, and what species of control, in judicial matters, over others. It appears to me that the investigation of the present question will speedily decide half these points for Madras. The Commission can then be called upon to say why the Act to be passed should not afterwards be extended to the whole of India, or what modifications may be necessary? The answer would in fact be a very material part of a code of procedure.

(signed) *A. Amos.*

(No. 188.)

Legis. Cons. 29 Nov. 1841. No. 8.

From *T. H. Maddock*, Esq. Secretary to the Government of India, to *W. Elliot*, Esq. Acting Secretary to the Government of Fort St. George.

Sir,

Legislative Dept.

THE Governor-general in Council has maturely considered the opinions on the better constitution of the judicial courts of the Madras presidency, submitted with Mr. Chief Secretary Chamier's letter of 23d February last; and I am now desired to forward copies of a correspondence with the Indian Law Commissioners, consequent on the receipt of that letter, and to convey to you the following observations and instructions of his Lordship in Council. Upon points on which no remarks and suggestions are now made, it will be understood that the decision upon the views of the Madras Sudder Court and of the Law Commissioners, whether these be in accordance or at variance with each other, is designed to be left to the Madras government.

2. It may be convenient to give, in the first instance, a brief statement in regard to the extent and nature of the Madras judicial establishments, the modification of which is under discussion.

3. There are at Madras 12 provincial court judges.

4. There were originally 19 zillah judges in 19 districts. By the new arrangements respecting the hilly tracts of Ganjam and Vizagapatam, the remaining portions of these two, out of the original 19 districts, have been formed into one zillah; so that, in the present plan for establishing a civil and session judge in every zillah, only 18 such judges are required.

5. In eight out of these 19 districts the office of zillah judge was abolished in 1821, and an assistant judge substituted in his place. The "assistant judge," though with a minor designation and emolument than the former zillah judge, has yet, since 1827, exercised the same jurisdiction. In one district, in lieu of an "assistant judge," a "native judge," latterly called a principal sudder ameen, was established, who has also exercised the same jurisdiction, except in special excepted cases. Thus the Madras principal sudder ameen, in the same manner as the zillah judge or the assistant judge, can award, generally, a criminal sentence of six months' imprisonment, with commutations extending to imprisonment for a further period of six months, committing, like the zillah or assistant judge, cases of a graver kind for trial by the circuit court; and in regard to the particular crimes of burglary or theft without open violence, he can, equally with the zillah or assistant judge, award a sentence of imprisonment for two years.

6. There are now, by additional appointments within districts, nine assistant judges and three principal sudder ameens employed in the Madras territories.

7. The actual establishment is thus:—

Provincial court judges	12
Zillah judges	12
Assistant judges	9
Principal sudder ameens	3

And these judges of higher jurisdiction have below them:

Provincial court registers	3
Zillah registers	11

(These

(These registers being civil servants.)

Sudder ameens - - - - - - -	*31 or 32
Moonsiffs (district) - - - - - - -	*98

8. For this establishment it is proposed to substitute (independently of any temporary provision for the disposal of existing arrears in the provincial courts):—

Civil and session judges - - - - - - -	18
Assistant judges - - - - - - - -	13
Principal sudder ameens - - - - - - -	10
Sudder ameens - - - - - - - -	34
Moonsiffs - - - - - - - - -	100

9. Upon this enumeration his Lordship would observe, first, that it seems highly desirable to get rid of the class of "assistant judges" altogether, and to introduce at Madras the great principle, long well established at Bombay, and nearly everywhere established in Bengal, of making over to uncovenanted judges (native or European) the duties of original jurisdiction, unless in cases reserved on very special grounds, and of confining the European covenanted judges to the decision of appeals, and to the functions of general control.

10. The great powers heretofore entrusted to the few principal sudder ameens employed at Madras, almost identical with those of the European zillah judges, will have in some measure prepared the way for such a change.

11. It is understood that the Law Commissioners may now be disposed to dispense with the restriction proposed in their Report, forwarded with this letter (in conformity with that heretofore placed at Madras upon all judges, covenanted or uncovenanted, excepting judges of the provincial courts), and to give to the Madras assistant judges or principal sudder ameens original jurisdiction in suits as well above as under 5,000 rupees in value; thus bringing the Madras system in unison with that of Bengal and Bombay.

12. The objections which may be stated to the immediate discontinuance of the grade of "assistant judge" are, that a sufficient number of qualified principal sudder ameens may not at once be found to take the place of the assistant judges, and that it may be useful and proper to employ temporarily, as they are now employed, the services of the civil officers holding the situation of assistant judge, since they can only be gradually transferred to other appointments, and would otherwise have to be placed on unemployed salaries.

13. As above said, 23 officers in all, of both the grades, are proposed by the Law Commissioners, and there are as yet only three principal sudder ameens throughout the Madras districts.

14. On objections of this nature the local government only can decide. The Madras Sudder Court recommend that seven new principal sudder ameens be appointed, so as to raise the number to 10. The Governor-general in Council would hope that, with a subordinate native judicial service of at least 30 sudder ameens, and nearly 100 moonsiffs (the last mentioned being described as having been duly remunerated by salaries ranging in three grades from 100 to 140 rupees a month, and as being of a generally fair character), little difficulty will be experienced in still further enlarging the number of principal sudder ameens; at least he would confidently trust that it cannot, even now, be found necessary to add, as contemplated by the sudder judges, to the number of covenanted assistant judges.

15. On the whole, his Lordship in Council would, upon this point, empower the Madras government by law to appoint, in each district, under the civil and session judges, assistant judges, or principal sudder ameens (both classes of officers exercising the same powers), as may be deemed expedient, and he would now instruct that government to enforce universally, with all the expedition that the means at its command will admit, and that may be consistent with a just regard to public economy and to the claims and qualifications of individuals,

* These numbers obtained in a memorandum from Mr. D. Eliott.

(C.) No. III.
Madras Judicial System.

individuals, the principle of employing native or other judges, taken from the general community, in the subordinate though important jurisdiction here referred to, and of thus eventually reserving the covenanted officers for the grade of civil and session judge exclusively.

16. This arrangement will assimilate the administration of Madras to that of all other parts of British India which are governed by fixed laws, and will, his Lordship in Council is persuaded, be conducive in its permanent results alike to efficiency and economy.

17. Secondly. On the mode of bringing offenders for trial before the new session judges, his Lordship in Council feels an insuperable objection to the proposition for sending such cases directly from the police of the interior to those judges, without a previous sifting and arrangement of the evidence by another responsible party, and a regular commitment for trial, upon specified grounds, after such preliminary inquiry.

18. The Madras Sudder Court remark, in support of this proposition, that, "1st, It will bring higher qualifications to bear upon the preparation of the cases; and, 2dly, the preparation will be more exactly adapted to the trial, both being the work of the same person, who must know better than any other can know what parts of the case require further elucidation for the full satisfaction of his own mind in the discovery of the truth."

19. But to his Lordship in Council it appears that this preparation of a case, involving the detection and pursuit of traces and suspicions of guilt, the active conduct, in fact, of a public prosecution, is wholly inconsistent with the calmness and impartiality requisite in a judge. These indispensable qualities on the judicial bench he would never in this manner put in hazard. The expedition which can be gained only at the risk of their loss, would, in his judgment, be an expedition subversive of the first securities for justice.

20. The utmost that it seems to him the session judge could properly do towards causing deficiencies of evidence to be supplied, is, by quashing the commitment, to remit a case for that purpose to the prosecuting officer, or, in rare instances, to cause a particular witness, who had been previously named, and whose evidence might be clearly and unquestionably essential, to be summoned before himself. Such a procedure is understood to be usual in Indian judicial practice, though even this very guarded usage might be esteemed beyond the proper functions of a judge administering English law.

21. It is true that, as stated by the Madras Sudder Court, the course to which his Lordship in Council is opposed is now followed in cases coming for sentence before the Madras criminal and assistant judges, or principal sudder ameens, and before the magistrates who possess an extensive criminal jurisdiction in Bengal. But this unison of prosecuting and judicial powers, to the degree to which it is carried, has always been regarded as a very lamentable defect in our Indian jurisprudence, and ought to be pointed out, not as an example to be imitated with a still more important description of trials, but as an error to be rectified at the earliest possible opportunity.

22. It is important to note that, as a consequence of the proposition for sending up cases directly from the police to the session judges, the Sudder Court at Madras observe, "a greater latitude must necessarily be given to the police as to the period within which proof of the graver crimes is to be completed." If from this it is to be implied, that the wholesome restriction on the mofussil police, as to the time for which they may detain alleged offenders within their own custody, is to be abandoned, such a result of the plan would seem to be, of itself, nearly a conclusive argument against its adoption.

Para. 8, of Proceedings, 14 Jan. 1841.

23. Comparatively little delay now arises in Bengal from sending up the commitment of a magistrate to the session judge at the same station, and the Government may be well satisfied if no greater delay should hereafter be incurred in the Madras districts.

24. In addition to the objections here urged, upon higher grounds, against sending up cases for trial to the session judges without a previous inquiry and commitment, the Law Commissioners are of opinion, that the session judges could

could not undertake the mass of duty to be thus thrown upon them, without neglecting their functions of decision and control as civil judges.

25. Assuming then, upon these grounds, that there is to be a commitment in cases brought before the sessions courts, his Lordship in Council would direct all attention to the proper determination of the officer in whom the duties of investigation and arrangement connected with a commitment may best be vested.

26. It is a peculiarity of the system in force at Madras, that the commitment to the higher court is there made, not by the magistrates, or by any officer exercising the powers of magistrates, but by a lower grade of judicial court, that is, as has been before said, by the criminal judge, or assistant judge, or principal sudder ameen. It would appear clearly better, on principle, that the commitment, involving intimate intercourse with the police, and some efficient control over it, should be the act of some officer connected with the magistracy of the country, than of any separate court; and the Law Commissioners also look to the eventual establishment of the office of public prosecutor for this duty. They point, however, to such a measure as a part only of such a general revision of all establishments as may not be practically undertaken for several years to come.

27. The rule laid down in respect to commitments at Madras is the same as that established in Bengal, namely, that they are to be made, not according to English practice, merely upon *primâ facie* sufficient informations or probable evidence, but strictly, in no case, "without a reasonable probability of conviction before the court of circuit," and after "investigating fully" the facts of the case, and a discretionary decision as to taking evidence on behalf of the accused.

Sec. 2, Reg. XIII 1832, Madras Code.

28. The Law Commissioners considering it necessary to save the session judges from being borne down by the mass of work which would come upon them if commitments were entirely discontinued, and yet willing to throw upon them as much as they can undertake, recommend that the committing officers should confine themselves to requiring only *primâ facie* or probable evidence of guilt. His Lordship in Council is very doubtful, however, of the expediency of sanctioning such a return to former* usage. It seems to him very desirable that the proceedings of the lower officers should be extremely careful and nearly complete, and that the time of the higher courts should not be taken up, excepting with cases in which there may be sufficient reason to anticipate a conviction.

29. The suggestion of the Governor-general in Council to meet the exigency would be to this effect: that a number of officers, of sufficient standing (there appear to be three provincial and 11 zillah registers to be thrown out of employ by the change of judicial system, and therefore available for the purpose), should be attached to the magistrates and collectors of districts, to aid them, especially in the police department, and to be charged with the preparation of commitments. This proceeding would be quite analogous to that followed in Bengal, where, on the abolition of registerships, the office of joint magistrate and deputy collector was created. A change of the Madras system of administration so radical as that of entirely separating the magistracy from the collectorship, his Lordship in Council does not propose to discuss here, as such a discussion would only, he feels, prolong indefinitely the delay which has already occurred in acting on the repeated orders of the Honourable Court respecting the Madras judicatories. But the new joint magistrate at Madras (or the new officer to be appointed for the purpose, under whatever designation may be there preferred), by being in constant communication with the magistrate, and by being able to resort, more easily than the court of the criminal or any other judge can do, to his influence and authority, will, it is apprehended, have decidedly better facilities than now exist for stimulating and guiding the police in their duties of investigation. It might, perhaps, also, his Lordship

* The present rule of a full inquiry before commitment was introduced in Bengal by Reg. VIII. 1830; in Madras by Reg. XIII. 1832.

Lordship in Council would in this place remark, remove a difficulty which has been raised in these discussions, if the direct supervision of the gaol were principally vested in this new officer, so that the functions of the session judges in respect to gaols might be strictly those of inspection and control.

30. The Governor-general in Council trusts, from the inquiries which he has been able to make here, that the adoption of this suggestion will not be found very difficult. If unforeseen obstacles should oppose it, the Madras government are requested to state what other plan seems to them the best for the proper conduct of the business of committing offenders for trial. His Lordship in Council fears that the tuhseeldars and ameens of police in the Madras territories, though fairly paid, and generally trusted officers, are not fit to be charged with the duty of committing offenders for trial on their own responsibility.

31. If the scheme of employing joint or assistant magistrates be adopted, it will deserve consideration whether these officers should not, in the more serious of the cases falling within his limit of authority, commit to the principal sudder ameen, who has a high criminal jurisdiction, as well as to the session judge; the same objections applying, though of course in a smaller degree, to the police sending in their cases to the principal sudder ameen, who performs the double operation of preparing and trying the cases, as have been stated in regard to the direct communication of the police with the session judges.

32. Upon this scheme it is also to be noted, that it will be expedient clearly to provide that the magistrate will always retain a power of direct commitment to the superior criminal courts, independently of the joint or assistant magistrate.

33. As a means of lightening the labours of the officers with the powers of criminal judges, it has been proposed, in the discussions of the Supreme Government, that the powers of the magistrates (and of the new assistant or joint magistrates) in Madras, which do not at present exceed those of an assistant in Bengal, should be raised to that of awarding imprisonment for six months, with a commutation for fine to another six months' imprisonment, so as not to exceed a year's imprisonment in all. His Lordship in Council thinks that this proposition might be adopted, if the local government should consider it indispensably necessary to their arrangements, without seriously violating the principle which forbids the union of prosecuting and adjudicating powers in the same officer; for, practically, in cases falling within this limited amount of punishment, the prosecution is conducted entirely by the police of the interior, and the magistrate would seldom do more than pass sentence upon the evidence sent before him. But his Lordship in Council would not any further extend the judicial powers of magistrates, the general restriction of which at Madras is accordant with those sound maxims of jurisprudence, of which the Government must seek to enforce the observance, as rapidly as the Government can, throughout their territories.

34. The native judges at Madras have long been trusted with powers in criminal cases to a considerable degree, and his Lordship in Council is of opinion that the employment, though in a guarded and progressive manner, of native judges in the duties of criminal as well as of civil justice is the only ground upon which the Government can hope to introduce a permanent and efficient reform of the former branch of their administration. The powers of principal sudder ameens at Madras, co-extensive with those of criminal judges, have been before mentioned; and, by Regulation III. of 1833 of the Madras Code, the sudder ameens are authorised "to exercise the powers conferred upon criminal judges," excepting only in cases committable for trial before the courts of circuit, and subject to the check that their judgments may be over-ruled (as those of a joint magistrate may be by a magistrate in Bengal) by those judges. As far as is known, the use of this jurisdiction by sudder ameens has been beneficial. Considering the establishment of fixed and proximate tribunals to be a matter of vital importance in criminal procedure, his Lordship in Council would now invite the Madras government to consider whether, to the extent, at least in the first instance, of the power of imprisonment for a month, possessed by Bengal assistant magistrates, the district moonsiffs may not also be most usefully vested with criminal powers. His Lordship in Council is aware that the tuhseeldars, and other heads of Madras district police, have now certain minor

Sec. 2.

powers

powers of punishment, as specified in the margin ;* but these might be either taken away or allowed to remain, consistently with the somewhat increased jurisdiction proposed for moonsiffs, as the Madras government may think right. If the additional duty to be thus imposed on moonsiffs should require any addition to the number of officers of that class, it will be for consideration whether the funds might not be provided by discontinuing the grade of sudder ameen, the retention of which may seem unattended with adequate advantage.

35. It remains to notice more briefly the other points raised by these papers, on which some remark seems necessary.

36. Of these are, Thirdly, Disposal of existing arrears in the provincial courts.

37. On this point the Law Commissioners propose to retain temporarily the services of four out of the 12 provincial court judges, for the decision of the cases on the files of these courts. On the other hand, this measure may be thought unnecessary, and it might be desired to transfer the cases, as was done in Bengal, to the file of the Sudder Court. It is to be remembered on this subject, that the transfer of the provincial court arrears to the Bengal Sudder file certainly caused great inconvenience for a time in the Sudder Court, and that the Madras government may not be able immediately to provide for all the provincial court judges, as civil and sessions judges of districts, in which case the employment of some of them in the disposal of these arrears may be certainly advantageous. His Lordship in Council would refer the question, as one of local convenience and arrangement, to the Madras government.

38. Fourthly. Filing of original civil suits and distribution of criminal cases for trial.

39. The Law Commissioners and Madras Sudder Court appear to unite in wishing that civil suits and criminal cases should be, according to their degrees, brought as much as possible directly before the several classes of tribunals competent to try them; another plan is to have all such suits and cases preferred in the first instance to the civil and sessions judges of districts, who would refer them, as they might think fit, to the different subordinate tribunals. His Lordship in Council is inclined to concur with the Law Commissioners and Madras Sudder. It is already the practice at Madras that cases should, for the most part, be taken at once to the courts competent to try them, and there do not seem grounds for discontinuing that practice, especially as, in the revision of the Bengal Regulations which was contemplated under the care of Mr. Millett, it was decided to abandon the contrary system, which prevails to a great extent in this presidency.

40. Fifthly. Execution of decrees.

41. His Lordship in Council is disposed, with the Law Commissioners, to give a discretion by law which shall admit of the decrees of the civil and sessions judges being executed by the courts below them. It may often be very desirable to employ the inferior courts in the execution of duties of this description.

42. Sixthly. Special appeals.

43. His Lordship in Council is inclined also, with the Law Commissioners, to keep the decision of special appeals as much as possible to the Sudder Court itself. It is evident that greatly less business is now performed by the Madras Sudder judges than that which is disposed of by the Calcutta Sudder judges, and want of due leisure on the bench at Madras is not, therefore, much to be apprehended. His Lordship in Council will, at an early period, communicate to the Right honourable the Governor in Council a series of papers on a revised law of special appeal, and request his opinion on the adoption of that law at Madras.

44. Seventhly. Trial by assessors or jury.

45. The

* For thefts not exceeding five rupees, ten days' confinement, with labour. For other trivial offences, a fine of three rupees, or three days' imprisonment.

(C.) No. III.
Madras Judicial System.

45. The Section (the 32d) of the draft Act prepared by the Law Commissioners does not, his Lordship in Council observes, go beyond extending to Madras the Bengal Regulation VI. of 1832, a measure to which all authority appears favourable; that Section may probably therefore be approved by the Madras government.

46. Eighthly. Financial result.

47. The Governor-general in Council observes that the saving estimated upon the execution of the arrangements now under discussion, as they were at first intended, was about 2½ lakhs of rupees per annum; he would request from the Madras government a clear statement of the saving which will arise from the modified plans now referred to them, including the general employment of the principal sudder ameens in the place of assistant judges, and the addition of officers with powers analogous to those of our joint magistrates, to the establishments of the magistrates and collectors.

48. His Lordship in Council would further request from the Madras government that they cause a revised draft of Act to be prepared, upon the principles here explained, with such addition of detailed provisions as may be suggested by the draft of the Law Commissioners, or as may occur to the Madras authorities; such revised draft to be submitted to the Supreme Government, together with the draft of the Commissioners, in a comparative statement, showing, section by section, the differences between them, and the grounds for those differences, set forth as fully as the nature of each section may require.

49. His Lordship in Council would use this opportunity to communicate to the Madras government the rules which are in force in Bengal for the examination of candidates for moonsiffships, and for the strict promotion of native judicial officers from the grade of moonsiff to that of principal sudder ameen. These rules may supply hints which may perhaps be found useful.

I have, &c.

Fort William,
29 November 1841.

(signed) *T. H. Maddock,*
Secretary to the Government of India.

—(C.) No. IV.—

ON SLAVERY IN THE STRAITS SETTLEMENTS.

(C.) No. IV.
Slavery in the Straits Settlements.

Legis. Cons.
25 October 1841.
No. 1.

(No. 145.)

From *T. H. Maddock,* Esq. Secretary to the Government of India, to Indian Law Commissioners.

Gentlemen,

WITH reference to pp. 171 to 182 of your printed Report on Slavery, dated 15 January 1841, I am desired by the Right hon. the Governor-general of India in Council to forward to you the accompanying copies of a despatch from the Honourable the Court of Directors, dated 25 August 1841, No. 16, and its enclosure, and to request that you will favour his Lordship in Council with any explanation which you may be able to afford, and a report of the measures which you may deem it expedient to propose on the subject therein discussed. A copy of the despatch of the Honourable Court will be immediately communicated to the Governor of the Straits Settlements, who will be requested to give in return such remarks and statement of facts as may fully elucidate the subject.

I have, &c.

Council Chamber,
25 Oct. 1841.

(signed) *T. H. Maddock,*
Secy to Govt of India.

(C.) No. IV.
Slavery in the Straits Settlements.

(No. 175.)

From *T. H. Maddock*, Esq. Secretary to the Government of India, to Governor of the Straits Settlements.

Legis. Cons. 25 October 1841. No. 2.

Sir,

I AM directed by the Right honourable the Governor-general of India in Council to forward to you the accompanying copy of a despatch from the Honourable the Court of Directors, dated 25 August 1841, No. 16, and its enclosure, and to request the favour of your furnishing, at your earliest convenience, a statement of facts, with such remarks as may serve fully to elucidate the subject.

I have, &c.

Council Chamber, 25 Oct. 1841.

(signed) *T. H. Maddock*, Sec^{y} to Gov^{t} of India.

From the Indian Law Commission to the Right honourable the Earl of *Auckland*, G.C.B. Governor-general of India, in Council.

Legis. Cons. 6 December 1841. No. 11.

WE have the honour to acknowledge the receipt of Mr. Secretary Maddock's letter, dated the 25th ultimo, and of its enclosures, being a copy of a despatch from the Honourable the Court of Directors, dated 25 August 1841; and a copy of a memorial addressed to the President of the Board of Commissioners for the Affairs of India, on the part of the British and Foreign Anti-Slavery Society, relative to the prevalence of slavery in the settlements of Penang and province Wellesley, Malacca and Singapore.

2. In our General Report upon Slavery, referred to in the letter abovementioned, we showed that slavery had not been recognised as a legal condition in Penang since 1820, and that it was equally contrary to law in the dependent province Wellesley, though there might be some persons there held in slavery illicitly, for which facility was afforded by the vicinity of the Siamese territory. p. 171 to 178.

3. The minute of "the late president of Penang," written in 1830, which is quoted in the memorial, is also referred to and quoted in our Report. It relates to "slave debtors." It will be observed, that the passage of the Minute cited in our Report, is the same as is cited in the memorial. It is remarkable that the memorialists having given the president's denunciation of the practice of importing slave-debtors as one "which, however conducted in form, is in reality slave-dealing, forbidden by law," have omitted to mention the proceeding that followed, which is thus stated in our Report: "It was accordingly ordered by the government, that a proclamation should be published, declaring the practice of importing and employing persons under the denomination of "slave-debtors," being "in reality only a cover to actual slave-dealing," to be an offence against the Act 5 Geo. 4, c. 113, and notifying, "that all persons offending in this respect would subject themselves, on discovery, to the penalties laid down in the Act." pp. 180, 181.

4. It was observed by the government of Penang, in 1820, that a British court of justice, which had entire jurisdiction over the island and its dependencies, could "never recognise such a being as a slave." With respect to slave-debtors, it was remarked by the government in the Minute written in 1830, already referred to, that "there can be no doubt that all so situated are *ipso facto* free, and that no one could, from such a transaction, establish any legal claim to their service against their consent." For reasons stated in our Report, the government was content with adopting the means within its power for preventing the further importation of slave-debtors without interfering directly to change the condition of those actually in that kind of service, leaving this to be effected gradually by the magistrates on complaints preferred to them.

5. In Lowe's account of Penang, published in 1836, quoted in our Report, slavery is spoken of as extinct, and it is stated that the system of debtor service which had been substituted for it, as explained in the Report, seemed to be dying a natural death. Mr. W. R. Young, the late Commissioner for the Straits, also states, that "there is no slavery in Penang." App. I. to Slavery Report, para. 65.

 6. With

(C.) No. IV.
Slavery in the Straits Settlements.

6. With regard to Malacca, the memorialists refer to an opinion recorded by Mr. Garling, resident councillor, in 1829, "that local slavery had no legal existence" there, in which opinion they say he was fully borne out by the government. But they omit to mention what is recorded in the Parliamentary Papers, which it would seem they had before them, and is noticed in our Report, that the local executive and judicial authorities, the advocate-general in Bengal, and the Supreme Government, finally agreed in recognising the legitimacy of the slavery existing before the cession of the settlements, according to the registers of the Netherlands government; or, to use the words of the advocate-general, that "those persons who were slaves, and entered as such in the register under the government of the Netherlands, are legally to be considered in a state of slavery since the transfer of that place to the British authority and the establishment of an English court of justice."

7. It is stated by the memorialists, that "in 1829, the holders of slaves feeling the uncertain tenures by which they held them in bondage, and anxious to secure their services to as late a period as possible, passed certain resolutions, to the effect that 'slavery shall not be recognised in the town and territory of Malacca, after the 1st (31st) December 1841.'" In our Report, it is shown that the principal inhabitants had previously agreed, in 1819, that all children born of slaves after that period should be free; and that in 1829, at the instance of the governor, they were led to take into consideration the best mode of abolishing slavery entirely, and finally passed the resolution above cited. The time (31 December 1841) will immediately arrive when, according to that resolution, slavery should be at an end; and it will be for the Supreme Government to judge, upon the reports that may be received from the local authorities, whether there is a necessity to interfere legislatively to give effect to it.

p. 180.

Report of Mr. Raffles, agent to the Governor-general, 10 June 1811. Life of Sir S. Raffles, p. 78, 79.

8. We may observe that, in 1811, all the government slaves at Malacca were emancipated by orders of the Governor-general of India.

9. With regard to Singapore, we observed in our Report, that as the settlement had been established long after the slave trade had been abolished by Act of Parliament, no slaves could have been introduced there legally, and that as the island was previously inhabited only by a few Malay fishermen, it might be presumed that none were found there on its establishment. Sir Stamford Raffles, in a private letter written in 1823, made the following observations:—

Life, p. 538.

"This establishment was formed long after the enactment of the British Legislature which made it felony to import slaves into a British colony, and both importers and exporters are alike guilty, to say nothing of the British authority who countenanced the trade. The acknowledgment of slavery in any shape in a settlement like Singapore, founded on principles so diametrically opposed to the admission of such a practice, is an anomaly in the constitution of the place which cannot, I think, be allowed to exist." Accordingly, to the sentiments thus expressed, on the 1st May 1823, in his capacity of Lieutenant-governor of Fort Marlbro' and its dependencies, Sir S. Raffles passed a Regulation (No. V. of 1823) for the prevention of the slave trade at Singapore, in which it was declared, that "as the condition of slavery under any denomination whatever cannot be recognised within the jurisdiction of the British authority, all persons who may have been so imported, transferred, or sold as slaves, or slave-debtors, since the 26th February 1819, are entitled to claim their freedom on application to the magistrates;" and that, for the future, "no individual can be imported for sale, transferred, or sold as a slave or slave-debtor; or, having his or her fixed residence under the protection of the British authorities at Singapore, can be considered or treated as a slave, under any denomination, colour, or pretence whatever." And in a scale of crimes and punishments prepared by him, "slave-dealing" is mentioned, the penalties for British-born subjects being those prescribed by the several Acts of the British Parliament for the abolition of the slave trade, and for other persons loss of property in the slave, and fine and imprisonment, at the discretion of the court."

10. The memorialists say, that they regret to observe that Singapore affords "the best market for slaves;" but the authority they refer to does not bear them out, as it relates to a period anterior to 1830, before the government issued the proclamation above cited, declaring the practice of importing slave-debtors

debtors to be an offence against the Slave Trade Act, 5 Geo. 4, c. 113. This proclamation, it appears from Mr. Young's Evidence in the Appendix to our Report, has been observed, and, with a court administering English law, under the guidance of an English professional judge, we cannot doubt that the provisions of the Act to which it refers are duly enforced.

pp. 63. 65.

11. The proclamation, Mr. Young states, is not understood to include the case of the Chinese emigrants who are imported under contracts to serve for a term some person who will pay for their passage; and it appears from the minute of the Governor in 1830, that it was not intended to apply to such cases, it being understood that the Chinese were fully aware of the nature and conditions of the contracts they entered into, and were not likely to suffer by being overreached in them.

Report, p. 180.

12. On the whole, it does not appear that anything further is required to be done by government, in its legislative capacity, for the suppression of slavery in the settlements of Penang and Singapore.

13. With regard to Malacca, as before observed, it is yet to be ascertained whether the resolution agreed to by the inhabitants in 1829 is operative.

14. Wherever bond-service exists in these settlements, we meant the rules recommended in our Report to be applied there, as well as in other parts of the territories under the Government of India.

We submit this our Report for the consideration of your Lordship in Council.

(signed) *A. Amos.*
C. H. Cameron.
F. Millett.
D. Eliott.
H. Borradaile.

Indian Law Commission,
20 November 1841.

(No. 192.)

From *T. H. Maddock*, Esq. Secretary to the Government of India, to *S. G. Bonham*, Esq. Governor of the Straits Settlements.

Legis. Cons. 6 December 184 No. 12.

Sir,

In continuation of my letter, No. 175, dated 25th October last, I am directed by the Right honourable the Governor-general in Council, to transmit to you the accompaning copy of a Report, dated the 20th ultimo, from the Indian Law Commissioners, on Slavery in the Straits Settlements, with reference to the despatch from the Honourable the Court of Directors of 25th August 1841, of which a copy has been already furnished you, and to request that you will favour his Lordship in Council with your opinion on the points adverted to in that Report, together with any additional information which you may be able to supply.

Legis.

I have, &c.

(signed) *T. H. Maddock*,
Secy to the Government of India.

Fort William,
6 December 1841.

—(C.) No. V.—

ON SPECIAL APPEALS.

(C.) No. V.
Special Appeals.

Legis. Cons.
5 April 1840–41.
No. 1.

(No. 278.)

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *T. H. Maddock*, Esq. Secretary to the Government of India, Legislative Department.

Sir,

Judicial Dept.

I AM directed by the Right honourable the Governor of Bengal to request that you will submit, for the consideration and orders of the Supreme Government, the accompanying correspondence*, which has passed between the two Sudder courts, regarding a difference of opinion as to the power of a zillah judge to punish litigious appeals under the provisions of the last Section of Regulation XIII. of 1796.

I have, &c.

Fort William,
18 February 1840.

(signed) *F. J. Halliday*,
Secy to the Government of Bengal.

P. S.—Please to return the enclosures.

(No. 345.)

Legis. Cons.
5 April 1841.
No. 2.
Enclosure.

From *J. Hawkins*, Esq. Register Sudder Dewanny Adawlut, Fort William, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, in the Judicial Department.

Sir,

Sudder Dewanny Adawlut.
Present:
R. H. Rattray,
C. Tucker, and
E. Lee Warner,
Esqrs. judges;
and A. Dick and
J. F. M. Reid,
Esqrs. temporary judges.

I AM directed to request that you will submit, for the consideration and opinion of his Honor the Deputy Governor, the accompanying copy of correspondence as per margin†, which has passed between this and the Western Court of Sudder Dewanny Adawlut, involving a difference of opinion between the two courts, on the subject of the power of a zillah judge to punish litigious appeals under the provisions of the last section of Regulation XIII. 1796.

2. The court have not thought it necessary to forward to the Western Court the draft of a circular, as suggested in the 3d para. of their register's letter, 2103, of the 16th ultimo, as the two courts are entirely at variance in regard to the point in issue; the Calcutta court considering that the zillah judges have the power of punishing litigious appeals, and the Western Court maintaining a contrary opinion.

I am, &c.

Fort William, 24 January 1840.

(signed) *J. Hawkins*,
Register.

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* Letter from Register Sudder Dewanny Adawlut, dated 24 January 1840, No. 345.

†From Judge of Hooghly - - - - - - - - No. 71, 20 April.
To Register Sudder Dewanny Adawlut, Western Provinces, No. 1162, 10 May.
From - - - - Ditto - - - - - - - Ditto - No. 920, 31 May.
To - - - - Ditto - - - - - - - Ditto - No. 1743, 5 July.
From - - - - Ditto - - - - - - - Ditto - No. 1306, 26 July.
To - - - - Ditto - - - - - - - Ditto - No. 2312, 16 August.
From - - - - Ditto - - - - - - - Ditto - No. 1678, 20 September.
To - - - - Ditto - - - - - - - Ditto - No. 3159, 15 November.
From - - - - Ditto - - - - - - - Ditto - No. 2103, 16 December.

(No. 71.)

From *R. Barlow*, Esq., Judge of Zillah Hooghly, to the Register to the Sudder Dewanny Adawlut, Fort William.

Sir,

I SHALL be obliged by your ascertaining whether the provisions of Sect. 3, Regulation XIII., of 1796, are applicable to the courts of zillah judges, as now constituted; and if not, whether it be not expedient to empower judges to fine parties preferring litigious appeals, as was done by the provincial courts before their abolition.

I have, &c.

Zillah Hooghly Dewanny Adawlut, 20 April 1839. (signed) *R. Barlow*, Judge.

(No. 1162.)

From *J. Hawkins*, Esq. Register Sudder Dewanny Adawlut, Fort William, to the Register of the Sudder Dewanny Adawlut, Western Provinces.

Sir,

I AM directed by the Court to request that you will lay before the Judges of the Court of Sudder Dewanny Adawlut for the Western Provinces, the accompanying copy of a letter from the Judge of Zillah Hooghly, No. 71, dated the 20th ultimo.

Sudder Dewanny Adawlut. Present: R. H. Rattray, W. Braddon, and C. Tucker, Esqrs. judges; and J. F. M. Reid, Esq. temporary judge.

2. The Court propose to inform the Judge of Hooghly, with the concurrence of the Agra Court, that as the powers exercised by the late provincial courts of appeal are now vested in the zillah judges, it is competent to those officers to fine parties preferring litigious appeals, as provided for by Sect. 3, Regulation XIII. 1796.

I am, &c.

Fort William, 10 May 1839. (signed) *J. Hawkins*, Register.

(No. 920.)

From *M. Smith*, Esq. Officiating Register Sudder Dewanny Adawlut, N. W. P. to *J. Hawkins*, Esq. Register to the Court of Sudder Dewanny Adawlut, Fort William.

Sir,

WITH reference to your letter, No. 1162, dated 10th instant, I am directed to say, that before giving an opinion upon the subject to which it relates, the court request they be informed whether, in para. 2d of that communication, allusion is made by your court to any particular law under which the powers exercised by the late provincial courts of appeal are vested in the civil judges.

Sudder Dewanny Adawlut, N. W. Provinces. Present: W. Lambert, W. Monckton, and B. Tayler, Esqrs. judges.

I have, &c.

Allahabad, 31 May 1839. (signed) *M. Smith*, Offg Register.

(No. 1743.)

From *J. Hawkins*, Esq. Register Sudder Dewanny Adawlut, Fort William, to the Register Sudder Dewanny Adawlut, N. W. P.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 920, dated 31st May last, and in reply to state, that in expressing their opinion that the powers exercised by the late provincial courts of appeal are now vested in the civil judges, they did not allude to any particular law on the subject; but they consider that the judges possess that power under the general extension of their jurisdiction consequent upon the abolition of the provincial courts; as for instance, the appellate authority conferred upon them by the provisions of Clause 2, Sect. 28, Regulation V. 1831; with reference to which the court desire me to observe, that as that enactment conferred the appellate juris-

Sudder Dewanny Adawlut. Present: R. H. Rattray, W. Braddon, and C. Tucker, Esqrs. judges; A. Dick, and J. F. M. Reid, Esqrs. temporary judges.

(C.) No. V.
Special Appeals.

diction on the zillah and city courts, it of necessity conferred on them all the powers before given to the provincial courts as courts of appeal, and consequently the powers vested in them by Sect. 3, Reg. XIII. 1796, especially as appellate courts.

2. Should, however, the Western Court be of opinion that an express enactment on the subject is desirable, the court will bring the matter to the notice of Government with that view.

I am, &c.

Fort William, 5 July 1839. (signed) *J. Hawkins*,
Register.

(No. 1306.)

From *M. Smith*, Esq., Officiating Register to the Sudder Dewanny Adawlut, N. W. P., to *J. Hawkins*, Esq. Register to the Court of Sudder Dewanny Adawlut, Fort William.

Sir,

Sudder Dewanny Adawlut, N. W. Provinces. Present: W. Lambert, W. Monckton, and B. Tayler, Esqrs. judges.

I AM directed to acknowledge the receipt of your letter, No. 1743, dated 5th instant, the subject of which the court have taken into consideration, and now instruct me to signify their opinion as follows:

2. Adverting to the fact of Clause 2, Sect. 28, Regulation V. of 1831, quoted in your communication, appearing to this court only to provide for appeals being received by the zillah or city judge from original decisions passed by the principal sudder ameen, in the same manner as similar appeals were previously received from decisions of the sudder ameen and moonsiff, as well as to the circumstance of Regulation II. of 1833 expressly prescribing the transfer of original suits pending before the provincial courts, and all matters connected with the primary jurisdiction exercised by such courts, to the zillah and city courts, and of all appeals and business appertaining to its appellate jurisdiction to the Sudder Dewanny Adawlut, I am desired to say that the court cannot concur in the view that the power of fining litigious appellants, conferred on the provincial courts by Sect. 3, Regulation XIII. 1796, became, by the operation of the new system consequent on the abolition of those tribunals, vested in the zillah and city courts.

3. With regard to your second paragraph, in which the possible expediency of a new enactment conferring such power is alluded to, I am instructed to remark, that the court are unable to recognise the expediency of such an enactment, or of the conferment of such power. They observe, that the constitution and circumstances of the two tribunals, and the rules for regulating their proceedings, are widely dissimilar. The decisions appealed to the provincial courts were passed by high European judicial officers, and the appellate court had not the power of confirming the decree without summoning the respondent, which it now possesses, and which, as it enables the court to dispose of the appeal without any delay, removes one chief ground for the necessity of the rule laid down in Sect. 3, Regulation XIII. 1796.

4. Accordingly, in the provincial courts great delay often occurred before the suit came to a decision, which was often confirmatory of the decree of the inferior court; and under such circumstances, the payment of the institution fee alone not being considered a sufficient imposition to discourage litigious and frivolous appeals, the necessity arose of the court being empowered to impose a fine for that purpose.

5. The court are disposed to think that the investment of the zillah courts with the same power might have the injurious consequence of deterring persons having real grounds of complaint from preferring appeals from decisions of the native judges.

I have, &c.

(signed) *M. Smith*,
Allahabad, 26 July 1839. Officiating Register.

(C.) No. V.
Special Appeals.

(No. 2312.)

From *J. Hawkins*, Esq. Register Sudder Dewanny Adawlut, Fort William, to *M. Smith*, Esq. Register of the Sudder Dewanny Adawlut, North West Provinces, Allahabad.

Sir,

Sudder Dewanny Adawlut.
Present:
R. H. Rattray, W. Braddon, and C. Tucker, Esqrs. judges; and A. Dick, and J. F. M. Reid, Esqrs. temporary judges.

I AM directed by the court to acknowledge the receipt of your letter, No. 1306, dated 26th ultimo, conveying the opinion of the judges of the western court, that the zillah judges are not competent to punish litigious appeals by a fine, under the provisions of Sect. 3, Regulation XIII. 1796, corresponding with Sect. 35, Regulation IV. of 1803, for the Western Provinces.

2. In reply, I am desired to observe that the court will be prepared to give every consideration to the argument of the western court, in regard to the inexpediency of vesting the zillah judges with the authority possessed by the late provincial courts for the punishment of litigious and vexatious appeals, when the question of the actually existing law on the subject shall have been finally disposed of, and which, it appears to the court, admits of further consideration.

3. It is true, the court observe, that the letter of the enactment above cited is applicable only to the late provincial courts; but in recording the opinion contained in my letter, No. 1162, of the 10th May last, they were under the impression that the spirit of the rule had been extended to the courts of the zillah judges. I am now directed to request that you will draw the attention of the western court to the circular order, No. 155, dated 2d October 1835, and to the opinion expressed in Mr. Officiating Register Harington's letter, No. 56, dated 7th August of the same year, on which it was founded. The terms of the circular appear to the court calculated to mislead the district judges, if it be now maintained that they do not in this respect (viz. of preventing litigious appeals) occupy the position of the late provincial courts.

4. Had the circular been limited in its application to the courts mentioned in Mr. Harington's letter of the 7th August 1835, and to which the western court originally intended to limit it, the court would have had no doubt as to the power declared thereby to be vested in the zillah judges, for it appears to them impracticable to extend one clause or sentence of a section to a particular court, and withhold from that court the power conferred by another part of the same section, the object of the entire section being one and the same. On the suggestion, however, of this court, made, as they now think, without sufficient advertence to the extent of the power exercised by the late provincial courts under the law cited, a second paragraph was added to the circular, declaring the spirit of the rule applicable to the courts of the principal sudder ameens, upon whom it never could have been intended to confer the power of fining under the circumstances contemplated.

5. I am desired to request that you will again lay the subject before the judges of the western court for their consideration and opinion, with reference to the foregoing observations. Should it be finally resolved to adhere to the present opinion of the western court, it will be necessary to issue a circular superseding the circular No. 155, and modifying No. 171 of the same volume. To the first paragraph of the circular No. 155, this court, however, are inclined to adhere, and with reference to the objection to the partial application of a law already adverted to, to rule that the provisions of Sect. 3, Regulation XIII. 1796, are generally applicable to the courts of the zillah judges; and to declare that in the courts of the principal sudder ameens, interest must be awarded upon the general principle of interest being leviable upon unpaid debts justly due.

I have, &c.

(signed) *J. Hawkins*,
Register.

Fort William, 16 August 1839.

(C.) No. V.
Special Appeals.

(No. 1678.)

From *M. Smith*, Esq. Officiating Register Sudder Dewanny Adawlut, North West Provinces, to *W. Tayler*, Esq. Officiating Register to the Court of Sudder Dewanny Adawlut, Fort William.

Sir,

Sudder Dewanny Adawlut, N. W. Provinces. Present: W. Lambert, W. Monckton, and B. Tayler, Esqrs. Judges.

I AM directed to acknowledge the receipt of Mr. Hawkins' letter, No. 2312, dated 16th ultimo, conveying the further observations of the Presidency Court on the presumed power of zillah judges, by the constructive application to their courts of the rule conferring that power on the provincial courts of appeal, to punish litigious appeals.

2. The Calcutta court now advert to a circular issued with the concurrence of the two courts, No. 155, dated 2d October 1835, and to this court's letter of the 7th August of the same year, whereon it was founded, extending to zillah judges the obligation imposed by Sect. 35, Regulation IV. of 1803, on the provincial courts, of adjudging interest on the sum decreed, at one per cent. per mensem, whenever they might confirm the decree of the lower court.

3. The Presidency Court argue that the terms of that circular, which, in prescribing the extension alluded to, advert to the object of the rule so extended as being the prevention of litigious appeals, and to the situation which the zillah courts are now placed by the abolition of the provincial courts, establish their view of the zillah courts, in the particular of preventing litigious appeals, occupying the position of the late provincial courts, and they hold that under a different interpretation the circular in question is calculated to mislead the district judges.

4. It is particularly urged by your court, the power of adjudging interest on decrees confirmed on appeal, and of imposing a fine in the case of litigious appeals, being both conferred by the section before quoted, that the extension of one portion of the rule necessarily includes the extension of the other, the object of the entire section being one and the same.

5. This court have adverted to the circular and letter in which it originated, and though, from the allusion to the "prevention of litigious appeals," they might possibly be considered to bear the construction which the Calcutta court suppose, this court are persuaded that such was not contemplated at the time of their being written.

6. It certainly was not intended to imply that the abolition of the provincial courts had placed the district tribunals exactly in their position, but only that it altered the constitution and character of the latter courts, and elevated them in the judicial scale by the removal of the intermediate grade between them and the tribunal of last resort.

7. With regard to the position of the Calcutta court (as stated in my fourth paragraph), that the object of the entire section is one and the same, this court cannot admit its correctness. It appears to them to comprehend two distinct objects, and is partly injunctive and partly permissive. It enjoins the award of interest on decrees confirmed on appeal, and is so far a mere act of justice to the respondent, to protect him from loss resulting from the delay; it permits the imposition of a penalty at discretion, in cases when the appeal may seem to be vexatious and preferred without cause, and is so far a means of particular retribution in the hands of the court as regards the litigious appellant, and of general check in respect to all suitors.

8. With reference to the foregoing view, the court concur with the Presidency Court in considering some modification of the terms of the circulars, No. 155 and No. 171, necessary.

I have, &c.

(signed) *M. Smith*,
Officiating Register.

Allahabad, 20 September 1839.

(C.) No. V.
Special Appeals.

(No. 3159.)

From *J. Hawkins*, Esq. Register Sudder Dewanny Adawlut, Fort William, to the Register of the Sudder Dewanny Adawlut, North West Provinces, Allahabad.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 1678, dated the 20th September last, communicating the further sentiments of the western court in regard to the constructive application to the zillah courts of the rule contained in Sect. 3, Regulation XIII. 1796, conferring on the late provincial courts of appeal the power of punishing litigious appeals.

Sudder Dewanny Adawlut.
Present:
R. H. Rattray,
W. Braddon,
C. Tucker, and
E. Lee Warner,
Esqrs. judges; and
A. Dick, and
J. F. M. Reid,
Esqrs. temporary judges.

2. In reply to the observations contained in the 7th paragraph of your letter, I am directed to state that the court entirely concur with your court that the rule alluded to is partly injunctive and partly permissive; but this argument does not appear to the court to meet their position, that if one part of the section is applicable to the zillah courts the other part must be equally so; with this difference in practice, that while the injunction is imperative, the permission is to be exercised at discretion.

3. As the opinion of the court then remains unaltered, they direct me to repeat their proposition of issuing a circular to the effect stated in the concluding paragraph of my letter, No. 2312, of the 16th August last. Should the western court still object to such a modification of the existing orders, the court would propose to submit the question to government for decision, with reference to the proper construction of Sect. 3, Regulation XIII. 1796.

I have, &c.
(signed) *J. Hawkins*,
Register.

Fort William, 15 November 1839.

(No. 2103.)

From *M. Smith*, Esq. Officiating Register Sudder Dewanny Adawlut, North West Provinces, to *J. Hawkins*, Esq. Register to the Court of Sudder Dewanny Adawlut, Fort William.

Sir,

I AM directed to acknowledge your letter, No. 3159, dated 15th ult. in reply to the further observations recorded by this court under date 20th September last, on the subject of the presumed power of zillah judges, by a constructive application to them of the rule conferring that power on the provincial courts of appeal, to punish litigious appeals.

Sudder Dewanny Adawlut,
N. W. Provinces.
Present:
W. Monckton, and
B. Tayler, Esqrs.
judges.

2. Your court now revert to paragraph 5 of their communication of the 16th August last, in which it is said, that "should it be finally resolved to adhere to the present opinion of the western court, it will be necessary to issue a circular superseding the circular No. 155, and modifying No. 171 of the same volume;" but that to the first part of the former circular, your court "were inclined to adhere, and to rule that the provisions of Sect. 3, Regulation XIII. 1796, are generally applicable to the courts of the zillah judges; and to declare that in the courts of the principal sudder ameens, interest must be awarded upon the general principle of interest being leviable upon unpaid debts justly due." The proposition of a circular in the above terms is now repeated by the Calcutta court.

3. This court do not hence gather with certainty to what extent the two courts agree in withholding from the zillah judges the power of punishing litigious appeals; but assuming that your court concur with them in the propriety of that course, they would wish, before definitively recording their acquiescence in the circular, in order to obviate possible misconception, to be put in possession of the draft of the circular proposed by your court, with which they will be glad to be favoured, in order that they may have the opportunity of suggesting the alteration of any point on which doubt might still exist.

I have, &c.
(signed) *M. Smith*,
Officiating Register.

Allahabad, 16 December 1839.

(True copies.)
(signed) *J. Hawkins*, Register.

(C.) No. V.
Special Appeals.

Legis. Cons. 5 April 1841. No. 3. Judicial Dept.

(No. 119.)

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *J. H. Maddock*, Esq. Secretary to the Government of India, Judicial Department.

Sir,

I AM directed by the Right honourable the Governor to request that you will submit for the consideration and orders of the Supreme Government the accompanying letter from the register of the Sudder Court, observing upon the subject of Mr. Halliday's letter, No. 441, of the 19th October last.

No. 191, 8th inst.

I have, &c.

(signed) *F. J. Halliday*,
Sec. to the Government of Bengal.

Fort William, 26 January 1841.

P. S.—Please to return the enclosure.

Legis. Cons. 5 April 1841. No. 4. Enclosure. Sudder Dewanny Adawlut. Present: R. H. Rattray, C. Tucker, E. Lee Warner, and D. C. Smyth, Esqrs. judges; and J. F. M. Reid, Esq. temporary judge.

(No. 191.)

From *J. Hawkins*, Esq., Register Sudder Dewanny Adawlut, Fort William, to *F. J. Halliday*, Esq., Secretary to the Government of Bengal, in the Judicial Department.

Sir,

I AM directed by the court to acknowledge the receipt of your deputy's letter, No. 1727, of the 10th November last, with its enclosed letter from the junior secretary to the Government of India, on the subject of constructions of law.

ABSTRACT: The views of the Supreme Government regarding constructions of law differ in certain points from those of the two courts.

2. The court observe, that although the Supreme Government have approved of certain views of the two Sudder Courts, expressed in the course of this correspondence, there are a few points on which a difference of opinion exists, and on these the court beg leave to submit the following remarks.

The plan suggested by Government, of opening the sudder courts to all special appeals liable to serious objection, from the large number of such appeals which would be preferred.

3. Instead of the present mode of construing doubtful points of law, the Supreme Government suggest the enactment of a law by which special appeals shall be preferred exclusively to the sudder courts. The court have given due consideration to the argument by which this plan is supported; but it appears to them that a practical and weighty objection to it, to be found in the large number of special appeals which would flow into this court in consequence, has been overlooked. The statements of 1839 show that during that period 1,238 petitions for the admission of special appeals were disposed of by the zillah judges, and that 1,058 petitions of the same description were pending on their files on the 1st January 1840. This is a mass of business which, with all the precaution which may be taken to prevent the admission of special appeals on insufficient grounds, cannot but embarrass the files of the sudder courts, even though the number of judges attached to each were to be considerably augmented.

The object of the Government would be attained by permitting the zillah courts to certify cases involving points of law not before judicially decided.

4. To avoid the inconvenience which would arise from an influx of special appeals, and at the same time to obtain a formal decision on points of law not before judicially decided by the superior court, it was suggested in para. 8th of my letter, No. 2683, of the 31st July last, that the zillah judges should be empowered to certify to this court the propriety of admitting an appeal in cases involving points of law not theretofore decided. The opinion of the court regarding the expediency of an enactment which shall empower them to hear and decide particular cases, has undergone no alteration.

But constructions of law by both courts would still be necessary in some cases.

5. The adoption of the suggestion would of course obviate the necessity of giving constructions of law on points which may come judicially before the lower courts; still the court believe there may be points on which the lower courts may require instruction for other purposes than that of being guided by them in the decision of suits pending before them; and with reference to the expediency

(C.) No. V.
Special Appeals.

expediency of uniform constructions of law in both presidencies, the court are of opinion that the two courts should be allowed to consult each other in such cases, as has been done heretofore.

6. The original enclosure of the letter under reply is herewith returned.

I have, &c.

(signed) *J. Hawkins,*
Registrar.

Fort William, 8 January 1841.

MINUTE by the Honourable *A. Amos,* Esq.

Legis. Cons.
5 April 1841.
No. 5.
Special appeals; circular orders; differences of sudder courts.

OUR discussions began with the consideration of two points, 1st, as to the course to be adopted when the sudder courts differ in opinion, and, 2dly, as to circular orders, especially when founded on hypothetical cases, and involving unargued and extrajudicial constructions of law.

As to the first point, I think it seemed to be the general opinion, that the courts would very properly consult each other in cases of difficulty, but that government ought not to interfere, and that no arrangement as to taking the voices of the judges of both courts was practicable according to their present constitution. I think, however, that a provision for determining differences between the sudder courts may, perhaps, be introduced into the Act under consideration of the Law Commission for establishing what they term a College of Justice.

With regard to circular orders, the consideration of this subject led to our noticing a defect of greater moment in the administration of Indian justice, and of which circular orders were, in some measure, a palliative; viz. the number of cases in which questions of law were finally determinable by zillah judges. The same inquiry brought to our notice a number of instances in which the time of the sudder courts was unnecessarily occupied with inquiries into matters of fact, where their inquiries might be much more conveniently limited to questions of law.

Some legislation appears desirable in order to obviate the necessity, or supposed necessity, for circular orders upon constructions of law, and to remedy the multiform and discordant decisions by zillah judges upon the same points of law, which decisions are, at present, not open to appeal; at the same time taking particular care that the sudder courts are not overcharged with new business.

The accompanying draft, furnished by Mr. Halliday, appears to accomplish the ends we have in view. Should it so appear to those members of council who are better judges than myself upon these subjects of mofussil procedure, I would propose that the draft be published, provided it appear, by a demi-official communication of our secretary, that the sudder court of the presidency are not opposed to the principles of the Act. Should they be opposed (which is not anticipated), their objections might be called for more formally before publication; after publication, it may be sent to both sudder courts, and to the Law Commission, for modification or extension.

20 March 1841. (signed) *A. Amos.*

Fort William, Legislative Department, the 5th April 1841.

Legis. Cons.
5 April 1841.
No. 6.

DRAFT OF ACT.

An Act for amending the Rules of Special Appeals.

1. IT is hereby enacted, that Clauses 1, 2, and 4, Section 2, Regulation XXVI. 1814; Section 7, Regulation XIX. 1817; Sections 2, 3, 4, 5, and 6, Regulation IX. 1819; Clause 1, Section 28, Regulation V. 1831; Section 6, Act XXV. of 1837, of the Bengal Code, be repealed.

2. And it is hereby enacted, that from and after the day of 1841, a second or special appeal shall lie to the Courts of Sudder Dewanny Adawlut at Calcutta and Allahabad respectively, from all decisions passed in regular appeals in any civil court in the manner hereinafter specified.

(C.) No. V.
Special Appeals.

3. And it is hereby enacted, that except in cases in which the petition relates to a decision passed in regular appeal by a zillah or city judge, every application for the admission of a special or second appeal shall be presented within the period limited for the admission of a regular appeal to the judge of the zillah or city within which the regular appeal has been decided; and every application for the admission of a special or second appeal against the decision passed in regular appeal by a zillah or city judge, shall, in like manner, be presented to a single judge of the Court of Sudder Dewanny Adawlut.

4. And it is hereby enacted, that no special or second appeal shall be admitted in any case, unless the judgment appealed against be upon some question of law merely as raised upon a statement of facts which shall not be liable to be controverted: Provided always, that the judge shall not certify any case unless where he is of opinion that the decision is contrary to law, or that it depends upon points of law upon which there exist reasonable doubts.

5. And it is hereby enacted, that the judge to whom such application for the admission of a second or special appeal may be presented, shall call before him the special appellant, or his vakeel or agent, and shall, at his discretion, call for and peruse any document forming part of the record of the cause which he may deem proper, and shall, by such other inquiries as he may consider necessary, determine the point or points on which the appeal is liable, under this Act, to be specially tried by the Courts of Sudder Dewanny Adawlut, and shall reduce the said point or points to writing, in the form of a certificate, and shall transmit the same in the vernacular language, together with an English translation thereof, attested by his official seal and signature, with the original petition for the admission of the second or special appeal, and copies of the decrees passed in the case to the register of the Courts of Sudder Dewanny Adawlut, to be tried by those courts in due course; and it shall be lawful for the judge to reject any such petition at his discretion, and his order so rejecting a petition for a special or second appeal shall be final and conclusive.

6. And it is hereby enacted, that the Courts of Sudder Dewanny Adawlut shall in every such case so transmitted to them, try and determine the point or points certified as above enacted, and no other point or part of the case whatever.

7. And it is hereby enacted, that it shall be competent to the Courts of Sudder Dewanny Adawlut, in any case in which the special ground of appeal may appear to have been incorrectly or incompletely certified by a zillah or city judge, to return the certificate for amendment, or, in cases in which it may appear to have been improperly transmitted, to annul the certificate altogether, without requiring the attendance of the special appellant, or his vakeel or agent.

8. And be it enacted, that nothing contained in this Act shall be construed to interfere with the authority vested in a single judge of the Court of Sudder Dewanny Adawlut, or in a zillah or city judge, under the provisions of Regulation IX. 1831 and Act VII. of 1838, of issuing any injunction to the lower courts, for the revision of any case on the grounds and in the manner laid down by that Regulation and Act.

9. And be it enacted, that nothing contained in this Act shall affect the trial of second or special appeals which shall have been admitted and be pending in appeal at the time of the passing of this Act, and that all such second or special appeals shall be tried and decided in the same manner as if this Act had not passed.

(No. 42.)

Legis. Cons.
5 April 1841.
No. 7.

From *T. H. Maddock*, Esq. Secretary to the Government of India, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal.

Sir,

Legislative Dept.

I AM directed by the Right honourable the Governor-general in Council to acknowledge the receipt of your letter, No. 119, of the 26th January last, with its enclosure, on the subject of the construction of law, and in reply to forward to you the accompanying draft of Act providing for the objects in view, which you

(C.) No. V.
Special Appeals.

you are requested to transmit, with the permission of the Governor of Bengal, to the Sudder Court at the presidency, for their opinion on its provisions.

2d. The original paper which accompanied your letter is herewith returned.

I have, &c.
(signed) *T. H. Maddock*,
Secy to the Govt of India.

Council Chamber,
5 April 1841.

(Duplicate, No. 1396.)

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *J. P. Grant*, Esq. Officiating Secretary to the Government of India, Judicial Department.

Legis. Cons. 19 July 1839/41. No. 42.

Sir,

I AM directed by the honourable the Deputy Governor of Bengal to request that you will submit, for the consideration and orders of the Supreme Government, the accompanying letter from the Register of the Nizamut Adawlut (No. 2086 of the 2d inst.), submitting draft of an Act to empower that court to receive appeals from the decisions of sessions judges, when such decisions are not in conformity to law, as required by your letter, No. 251, of the 10th June last.

Judicial Dept.

I have, &c.
(signed) *F. J. Halliday*,
Secy to the Govt of Bengal.

Fort William,
22 August 1839.

P. S. Be good enough to return the enclosures.

(Duplicate, No. 2086.)

From *J. Hawkins*, Esq. Register to the Court of Sudder Dewanny Adawlut, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, in the Judicial Department.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 1119, dated 27th June last, and in reply to transmit, for submission to his Honor the Deputy Governor, the accompanying draft of an Act to empower the Nizamut Adawlut to receive appeals from the decisions of the sessions judges, when such decisions are not in conformity to law.

Nizamut Adawlut. R. H. Rattray, W. Braddon, and C. Tucker, Esqrs. judges; A. Dick, and J. F. M. Reid, Esqrs. temporary judges.

I have, &c.
(signed) *J. Hawkins*,
Register.

Fort William,
2 August 1839.

DRAFT OF AN ACT.

1. IT is hereby enacted, that Sect. 3, Regulation IX. 1831, and such parts of Sect. 4, Act XXIV. 1837, as relate to the decisions of the sessions courts in judicial proceedings other than criminal trials, be rescinded.

2. And it is hereby enacted, that it shall be competent to the court of Nizamut Adawlut to receive an appeal from the decision of a sessions judge in any judicial proceeding other than a criminal trial, when such decision may be evidently illegal, and to issue an injunction to the sessions judge to proceed in conformity to law; provided that it shall not be competent to the Nizamut Adawlut to entertain any appeal or pass any order on the merits of such proceeding.

(True copy.)
(signed) *J. Hawkins*, Register.

(True copies.)
(signed) *F. J. Halliday*,
Secy to the Govt of Bengal.

(C.) No. V.
Special Appeals.

(No. 858.)

Legis. Cons. 19 July 1841. No. 43.

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *T. H. Maddock*, Esq. Secretary to the Government of India, Legislative Department.

Sir,

Judicial Dept.

I AM directed by the Right honourable the Governor of Bengal to request that you will submit, for the consideration and orders of the Supreme Government, the accompanying letter from the register of the court of Sudder Dewanny Adawlut, submitting the Court's opinion on the provisions of the proposed Act for amending the law of special appeals, which accompanied your letter of the 5th April.

No. 1704, of the 14th inst.

I have, &c.
(signed) *F. J. Halliday*,
Secy to the Govt of Bengal.

Fort William, 27 May 1841.

P. S. Please to return the enclosure.

(No. 1704.)

Legis. Cons. 19 July 1841. No. 44.

From *J. Hawkins*, Esq. Register to the Court of Sudder Dewanny Adawlut, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, Judicial Department.

Sir,

Sudder Dewanny Adawlut. Present: R. H. Rattray, C. Tucker, E. Lee Warner, Esqrs. judges; and J. F. M. Reid, Esq. temporary judge.

IN compliance with the requisition conveyed in the resolution of the Right honourable the Governor, No. 631, of the 20th ultimo, I am directed to report the opinion of the court on the provisions of the proposed Act for amending the law of special appeals.

2. To prevent doubts which may arise on the point, the court suggest that section 4 be altered so as to stand as follows: "And it is hereby enacted, that no special or second appeal shall be admitted in any case, unless the judgment appealed against be inconsistent with some established judicial precedent, or involve some question of law, usage, or practice, as raised upon a statement of facts which shall not be liable to be controverted. Provided always, that the judge shall not certify any case unless where he is of opinion that the decision is contrary to an established judicial precedent, or contrary to law, usage, or practice, or that it depends upon points of law, usage, or practice, upon which there exists reasonable doubts."

3. They would further suggest, that in para. 6th the third line be altered as follows: "Every case transmitted to or admitted by them, try," &c., and that in the third and fifth paras. the expression "presented" to a single judge, &c., be altered to "heard by a single judge."

4. The original papers connected with this reference are herewith returned, copies being retained for record.

I have, &c.
(signed) *J. Hawkins*,
Register.

Fort William, 14 May 1841.

(No. 887.)

Legis. Cons. 19 July 1841. No. 45.

From *J. Thomason*, Esq. Secretary to the Government, North Western Provinces, to *T. H. Maddock*, Esq. Secretary, Government of India, Legislative Department.

Sir,

Judicial Dept.

WITH advertence to the latter part of paragraph 4 of your letter, dated 30th March 1840 (a copy of which was furnished to this office), to the address of the Secretary to the Government of Bengal, concerning differences of opinion upon constructions of law and practice, existing between the lower and western courts, I am directed by the Honourable the Lieutenant-governor to transmit, for submission to his Lordship in Council, the accompanying copy of a letter from the Register Sudder Dewanny Adawlut, North Western Provinces, dated 10th

(C.) No. V.
Special Appeals.

10th April, with such portions of the correspondence referred to therein as are considered necessary to a right understanding of the subject.

2. His Honor concurs in opinion with the presidency court, regarding the admissibility of special appeals by the Sudder Dewanny Adawlut, from the decisions of principal sudder ameens, in cases cognizable by sudder ameens.

I have, &c.
(signed) *J. Thomason.*
Agra, 13 May 1841. Secretary to the Government, N. W. P.

Abstract.

With reference to his letter dated 30th March 1840, to the address of the Government of Bengal, transmitting copy of another from the Sudder Dewanny Adawlut, North Western Provinces, with correspondence between the lower and western courts; and concurring in opinion with the former, regarding the admissibility of special appeals by the Sudder Dewanny Adawlut, from the decisions of principal sudder ameens, &c.

(No. 656.)

From *M. Smith*, Esq. Register to the Court of Sudder Dewanny Adawlut, North Western Provinces, to *J. Thomason*, Esq. Secretary to the Honourable the Lieutenant-governor, in the Judicial Department, North Western Provinces, Agra.

Legis. Cons. 19 July 1841. No. 46. Enclosure.

Sir,

Sudder Dewanny Adawlut, N. W. Provinces. Present: B. Tayler, G. P. Thompson, and F. Currie, Esqrs. judges; and H. H. Thomas, Esq. officiating judge.

UNDER a contingency which appears to make such a course expedient according to the lately expressed opinion of the Government of India, in the legislative department, contained in the extract cited in the margin*, I am directed to request the submission of the accompanying copies of papers according to list appended, to the honourable the Lieutenant-governor, on the subject of a construction of Sect. 5, 6, and 7, Act No. XXV. 1837, resolved upon by the judges of the Sudder Dewanny Adawlut, at the presidency, (who have proceeded to act upon it), in which the judges of this court cannot concur.

2. The point which has been under discussion, and in respect to which the two courts are divided, is fully set forth in the papers sent, and as the correspondence alluded to in paragraph 3 of my letter to the register of Calcutta court, dated 22d September last, No. 1876, and enumerated at the end of that communication, is in the records of the government of the north-west provinces, its transmission is not needed.

3. Mr. Lambert, whose opinion was originally given with those of his colleagues, having since quitted the court, the papers were laid before Mr. Thompson, on his joining the court, and his sentiments are in unison with those expressed by the other judges, as will be seen by the transcript, which accompanies, of the note recorded by him on the occasion.

4. It will be noticed by his Honor, that although the presidency court admitted the ambiguous character of the provisions contained in the sections already indicated†, and addressed Government for any light regarding the supposed

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* Extract part of para. 9, of letter from Junior Secretary to Government of India, to address of Government of Bengal, of 19 October 1840:

"It might happen, under this plan, that the decisions of one bench on a particular point of law would differ occasionally from those of another; but this, with the interested vigilance of advocates, the deference to the authority of another superior court, which has previously decided the same point, and which authority ought to be entitled to great weight in all judicial discussions, and the printed report of decisions always before the court, could very seldom take place. When it did happen, it would be brought by either court to the notice of its own government, and thence to that of the Legislative Council, for a new or declaratory law, if such were thought to be needed."

N. B.—For the information of Government, copy of the entire communication from the Calcutta court, in which this extract is contained, is submitted. It concerns the subject of your letter, No. 1358, *dated* 23 *April, and my answer, No.* 1033, *of* 22 *May* 1840, *and of the other correspondence noted in Italics, as submitted in margin of para.* 5, *of this letter, on which the court will have to make a separate address.*

† Para. 2, of Mr. Hawkins' letter, No. 2981, of 14 August 1840.

(C.) No. V.
Special Appeals.

posed mistake, which the recorded deliberations that took place prior to the passing of the Act might throw on the subject, yet they did not await a reply, and have not alluded to the point in their last communication of February 5th, intimating the resolution to which they have come in the matter.

5. It must further be remarked, in explanation of this address, notwithstanding both courts having recorded opinions against the mode heretofore in use of referring controverted points for the determination of government, as laid down by paragraph 2 of the Judicial Resolution of 6th December 1831, and having resolved that the whole proposed by the presidency* court be acted on, and such questions decided by a majority of voices of the judges of the two courts, that the present occasion is not such as falls under that rule, the four permanent judges of each court being opposed, and this court having argued that a recourse to the opinion of a temporary judge of either court, for the purpose of settling the difference, is not sound in principle or advisable.

6. The court, therefore, being still entirely averse to the adoption of the rule introduced by the presidency court, avail themselves of the recommendation made in the extract cited in my first paragraph, to submit the matter to the government of the provinces, with a view to the enactment of a declaratory law.

I have, &c.

(signed) *M. Smith,*
Register.

Allahabad, 10 April 1841.

Abstract.

With reference to a construction of part of Act XXV. 1837, regarding which opinions of judges of two courts are equally divided, submits copies of papers, from which the question desired to be referred will be seen; notices admitted ambiguity of the law regarding it, explains reasons of this reference as illustrated by correspondence sent, and suggests enactment of a declaratory law to clear up the doubt.

Correspondence forwarded herewith, alluded to in paragraph 1.

(Copies.)

Register Calcutta Court, to my address No. 2981, dated 14th August 1840 and annexures.
My reply, No. 1876, dated 22d September, and minutes of four judges.
Register Calcutta Court, No. 3794, dated 23d October.
My reply, No. 2217, dated 20th November.
Register Calcutta Court, No. 486, dated 5th February 1841.

(No. 2981.)

Sudder Dewanny Adawlut.
Present:
R. H. Rattray, C. Tucker, E. Lee Warner, and D. C. Smyth, Esqrs. judges; and J. F. M. Reid, Esq. temporary judge.

From *J. Hawkins,* Esq. Register to the Court of Sudder Dewanny Adawlut, to *M. Smith,* Esq. Officiating Register of the Sudder Dewanny Adawlut, in the North Western Provinces.

Sir,

I AM directed to request that you will submit for the opinion of the judges of the western court the following observations regarding the proper construction of Sect. 5, 6, and 7, of Act XXV. 1837, a consideration of which has become necessary, in consequence of the presentation to this court of sundry petitions for the admission of special appeals, in suits within the competency of a sudder ameen to decide, but referred to and decided by a principal sudder ameen.

2. With

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* Paras. 4 and 7 of Mr. Hawkins' letter, No. 1745, dated 29 May 1840, to my address.
Note.—The court take the opportunity of submitting, in continuation of my No. 1033, *of* 22 *May* 1840, *copies of correspondence noted below, viz.:*
Register Calcutta Court, No. 1745, *of* 29 *May, and annexures.*
My answer, No. 1187, *of* 19 *June.*
Register Calcutta Court, No. 1972, *of* 19 *June.*
My reply, No. 1284, *of* 3 *July.*

(C.) No. V.
Special Appeals.

2. With reference to the ambiguous character of the provisions under consideration, the court addressed a letter to the Government, No. 1138, under date the 18th April last (a copy of which is herewith forwarded,) soliciting any information which the records of government might afford, calculated to throw light upon what appeared to the court to be an important error, in the omission, after Sect. 7, of a provision corresponding with Sect. 6 of the Act.

3. The Government not having as yet replied to this application, while numerous petitions for the admission of special appeals in suits of the kind above mentioned were constantly presented to the court, it became necessary to consider the legal bearing of the question, and to decide upon the admissibility or otherwise of the appeals. Accordingly, on the suggestion of Mr. D. C. Smyth, the court adopted their resolution of the 7th instant (a copy of which is forwarded,) with a view to the determination of the point in a manner the most satisfactory to the court, as well as to the parties desirous of appealing.

4. Agreeably to the resolution thus adopted, the question was argued by some of the principal pleaders of the court (who had previously urged their right to appeal) before Messrs. Tucker, D. C. Smyth and Reid, who were of opinion that, under the existing law, all cases either above or below 300 rupees, not within the competency of a munsiff, but within the competency of a sudder ameen to decide, and referred for trial to, and decided by a principal sudder ameen, are appealable specially to the Sudder Dewanny Adawlut. In this opinion Messrs. Rattray and Lee Warner have expressed their concurrence.

5. It was urged on behalf of the appellants, that agreeably to Clause 2, Sect. 28, Regulation V. 1831, parties possessed a right of special appeal to the Sudder Dewanny Adawlut under the provisions of the regulations applicable to such cases, from all decisions passed originally by a principal sudder ameen; and although that right had been specifically taken away in cases within the competency of a munsiff, but decided by the principal sudder ameen, by the provisions of Sect. 6, Act XXV. 1837, yet that no special provision had taken away that right in cases within the competency of a sudder ameen, but tried by a principal sudder ameen, and that the omission, after Sect. 7 of the Act, of a provision corresponding with Sect. 6, clearly evinced that it was not the intention of the Legislature to bar such appeals. It was also contended that the words cited in the margin, which occur in Sections 5 and 7, referred to other points, such as the period of appeal, &c. and not to the finality of the judge's decision, which is expressly provided for by Sect. 6, in the case of suits within the competency of a munsiff, but tried by a principal sudder ameen, whereas no such provision is to be found in regard to suits of the nature mentioned in Sect. 7.

"And to the same rules in regard to appeals."

6. The arguments urged on behalf of the appellants, the Court are of opinion are well grounded, and supported by the terms of the provisions under consideration. They hold, therefore, that cases decided under Sect. 7 of the Act, are specially appealable to the Sudder Dewanny Adawlut, under the rules applicable to the admission of special appeals.

7. I am directed to request an early communication of the Western Court's sentiments upon this subject.

I have, &c.
(signed) *J. Hawkins,*
Register.

Fort William, 14 August 1840.

RESOLUTION on a Note by Mr. D. C. Smyth, regarding the Operation of Act XXV. 1837, dated the 7th August 1840.

Read a note by Mr. D. C. Smyth regarding the operation of Act XXV. 1837.

Resolution.

Before passing any orders on the subject discussed in the note, the Court resolve, that the register select one or two cases to be argued in open court by the vakeels of the parties, as to the admissibility of the appeals. The other cases of the same nature can then be disposed of according to that precedent.

(True copies.)
(signed) *J. Hawkins,* Register.

(C.) No V.
Special Appeals.

(No. 1876.)

Sudder Dewanny Adawlut, N. W. Provinces. Present: W. Lambert, B. Tayler, and F. Currie, Esqrs. judges; and G. P. Thompson, Esq. officiating udge.

From *M. Smith*, Esq. Officiating Register to the Court of Sudder Dewanny Adawlut, North West Provinces, to *J. Hawkins*, Esq. Register to the Court of Sudder Dewanny Adawlut, Fort William.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 2981, dated 14th ultimo, with annexures containing observations as to the proper construction of Sections 5, 6, and 7 of Act No. XXV. 1837, and intimating the opinion of the Calcutta court, formed after hearing the point argued by some of the principal pleaders of that court, that under the existing law all cases either above or below 300 rupees, not within the competency of a munsiff, but within the competency of a sudder ameen to decide, and referred for trial to, and decided by a principal sudder ameen, are appealable specially to the Sudder Dewanny Adawlut.

Mr. Currie.
Mr. Lambert.
Mr. Tayler.
Mr. Thompson.

2. In reply I am instructed to forward for submission to the Presidency Court copies of minutes recorded by the judges of this court, in the order detailed in the margin, from which it will be apparent that while basing their arguments on various grounds, this court are unanimous in opposing the view adopted in the matter under notice by the judges of your court.

3. I am directed to transmit copies of the correspondence cited in the commencement of Mr. Lambert's minute, for the information and consideration of the Calcutta Court, in illustration of the presumable intention of the Government in this matter, and further, to refer you to para. 6 of my predecessor's letter to your address, No. 520, dated 30th March 1839, and para. 2 of your communication thereon, to the Bengal government, bearing date 19th April of the same year, No. 961, expressive of the "entire concurrence" of the Presidency Court in that address.

4. Adverting to the "petitions for the admission of special appeals," mentioned in your first paragraph, out of the presentation of which the present consideration of the question is stated to have arisen, I am instructed to add, that no instance has occurred of similar applications being brought forward in this court since the promulgation of the Act in question.

I have, &c.

(signed) *M. Smith*,
Officiating Register.

Allahabad, 22 September 1840.

Mr. *F. Currie*'s Minute.

I HAVE looked carefully into this subject, and I do not concur with the Calcutta Court. I think the provisions of Section 7, of Act XXV. 1837, which declare that all cases within the competency of a sudder ameen to decide, which shall be tried by a principal sudder ameen, shall be subject to the same rules in regard to appeals as they would have been subjected to if tried by a sudder ameen, do refer to the finality of the decision, as well as to other matters; and I think it is clearly established that such was intended to be the meaning conveyed by the expression by the proviso contained in section 6, following the same phrase in section 5, being thought necessary to mark the process by which this finality should be arrived at, and to declare that an appeal from a principal sudder ameen in the cases alluded to, should not be referable to another officer of the same grade, but should be heard only by the zilla judge. Expunge section 6, and the finality in respect to munsiffs' decisions remains; but then a case tried by a principal sudder ameen, or munsiff, might, with the sanction of the Sudder Dewanny Adawlut, be referred to another principal sudder ameen, if there were one, and a special appeal would lie to the judge; but when in this case of small value, the decision of so high an officer as a principal sudder ameen had been recorded, this process was thought unnecessary; and all that the absence of a corresponding proviso after Section 7 can prove is, that in cases of the greater importance and larger amount, the judge, if he thought fit,

fit, might, with the sanction of the Sudder Dewanny Adawlut, refer the regular appeal to another principal sudder ameen, and thus give, as heretofore, in suits within the competency of a sudder ameen, an opportunity for special appeal, but all determinable in the zilla.

2. The arguments contained in the beginning of paragraph 5 of the Court's letter of 14th ult. seem to be hardly tenable. Clause 2, Sect. 28, Regulation V. of 1831, doubtless left a right of special appeal to the Sudder Dewanny Adawlut in the suits referable to the principal sudder ameen under that law; but that law did not contemplate the trial by the principal sudder ameen of suits cognizable by a sudder ameen, and its provisions cannot be legitimately assumed to be applicable to cases to which it did not, and could not, refer. The scope and tendency of the whole law, set forth in Regulation V. of 1831, is to make the decision of all suits below 1,000 rupees in value, whether admitted to one or two appeals, determinable in the zilla, and this principle is distinctly presumed in Act XXV. of 1837.

3. It is not possible, in my mind, to conceive a reason for making the difference contemplated by the Calcutta Court, viz. that a case of less value than 1,000 rupees being tried by a sudder ameen originally, and by the judge in appeal, shall be final in the zilla; but if tried by a principal sudder ameen originally, and then by the judge in appeal, otherwise; and for supposing that such an arrangement was intended by the Legislature. The principal sudder ameen's judgment is assumed to be better than the sudder ameen's, and is purchased by Government at a much higher rate; it is contrary to reason, and to all the principles of jurisprudence, that this more valuable and better judgment should be thought to require more revision and scrutiny than that which is assumed to be of inferior worth.

4. I consider, therefore, that the letter and spirit of the enactment under consideration, and reason, and principle, are all opposed to the view now taken by the Calcutta Court, and which seems, from the correspondence put up with this letter, and from their own letter to Government of 18th April, to be of recent adoption.

(signed) *F. Currie*,
Judge.

Allahabad, 10 September 1840.

Mr. *Lambert*'s Minute.

REFERRING to the subject and dates of the correspondence noted in the margin, between this court and the government of these provinces (which correspondence does not appear to have been communicated to the Calcutta Court), I think it may be reasonably assumed that sections 5, 6, and 7, were framed with a view to legalize, by a formal enactment, the practice which had been authorized by the government in respect to the trial by a principal sudder ameen of suits within the competency of munsiffs and sudder ameens, and of appeals from decisions passed in such suits by principal sudder ameens; and assuming that the Legislature concurred in the views of the subject which were taken by this court, and adopted by the government, there can be no doubt that no distinction was intended to be made in regard to the finality of the judge's decisions in appeals from decisions of the principal sudder ameens, whether passed in their capacity of sudder ameens or of munsiffs.

From Court, 22 July 1836.
From the Government, 9 Aug. 1836.
From Court, 26 August 1836.
From the Government, 7 Sept. 1836.
From the Government, 22 Mar. 1837.
From Court, 31 March 1837.

2. Under this view of the question, the omission of a provision, after Section 7, corresponding with that in Section 6, appears to be quite immaterial, and in no way sufficient to authorise the admission of special appeals in suits decided by principal sudder ameens, in their capacity of sudder ameens.

3. Respecting the competency of a judge to refer appeals from the decision of a principal sudder ameen, in his capacity of sudder ameen, to another principal sudder ameen, I am not aware of any instance of an officer being authorised to try appeals from the decisions of an officer of the same grade, excepting in the case of a register invested with special powers being authorized to try appeals from decisions passed by another register, in suits of a certain class,

Para. 2, of Calcutta Court's Letter to Government.

Sec. 8, Reg. IX. 1819.

(C.) No. V.
Special Appeals.

class, and then it was provided that the original decision should have been passed by a register junior in the service to the officer competent to try the appeal; and I cannot think that, without a special enactment to that effect, a principal sudder ameen can be intended to try an appeal from a decision passed by another principal sudder ameen in any capacity.

(signed) *W. Lambert,*
Judge.

Allahabad, 17 September 1840.

P. S. I quite concur with Mr. Currie and Mr. Thompson in their remarks respecting the improbability of the intention of the Legislature to allow a special appeal to the sudder court, in a suit originally decided by a principal sudder ameen, in his capacity of sudder ameen, when such appeal would not be admissible under the law in a similar suit, originally decided by a sudder ameen.

(signed) *W. Lambert,* Judge.

Mr. *B. Tayler*'s Minute.

I CONCUR with Mr. Lambert. Government having made the decision of all suits below 1,000 rupees final in appeal before the judge, I cannot suppose that the omission in Section 7 was made for the purpose of allowing a special appeal to the Sudder Dewanny Adawlut in these decisions, which, had the Government provided a complete establishment of sudder ameens, would have been final.

(signed) *B. Tayler.*
Judge.

Allahabad, 18 September 1840.

Mr. *G. P. Thompson*'s Minute.

THERE can be no doubt that the terms used in Sections 5 and 7, being precisely similar, refer to the same thing, viz. (among other rules) to the finality. The addition of the proviso, as contained in Sect. 6, or the omission of such a proviso after Sect. 7, cannot, in my mind, alter the rule with respect to this finality in the face of a direct law countenancing it.

2. Thus much for the letter of the law: as to the spirit of it, I never will believe that the Legislature intended the decision of a principal sudder ameen (in the capacity of sudder ameen) to be open to a special appeal, when, had the same case been tried by a sudder ameen in his own capacity, such an appeal would be barred; or, in short, that the decision of a superior officer (which must be inferred to be better and more valuable than that of the inferior officer) should be subject to a revision to which the decision of the inferior is not.

(signed) *G. P. Thompson.*
Officiating Judge.

Mr. *H. H. Thomas*'s Minute.

THE Calcutta Court found the provisions of Sects. 5, 6, and 7, of Act XXV. 1837, of such an "ambiguous character," that they deemed it expedient to seek for further light among "the records of Government;" and though it does not appear that the search was in any way successful, yet has this ambiguity been so cleared and dispelled by the pleadings of the vakeels, that the court have now settled the question of "finality," by passing a resolution, in which the judges are all of one opinion, that in suits within the competency of a sudder ameen to decide, but referred to and decided by a principal sudder ameen, special appeals are admissible by the Sudder Dewanny Adawlut. On the other hand, the Allahabad Court have recorded their unanimous opinion, that in suits of the description above mentioned special appeals are not admissible by the Sudder

(C.) No. V.
Special Appeals.

Sudder Dewanny Adawlut, but that the decision of the zillah or city judge is final. These must be considered two singular instances of harmony and dissent: first, that the judges of each court should jump together in a point of law; secondly, that the two courts respectively should entertain diametrically opposite opinions. After a perusal of the papers connected with the subject, I concur with the judges of this court, whose minutes indeed have left little or nothing for me to subjoin either in the way of argument or illustration. It never was contemplated that the cognizance of suits below 1,000 rupees in amount should extend beyond the zillah or city judge's court, and I do not think that the matter is altered by the fact of suits within the competency of a sudder ameen to decide, being tried by a principal sudder ameen; for it must be considered, that the latter officer tries such suits as a sudder ameen, that the cases so tried are subject to the same rules in regard to stamp paper and to the same rules in regard to appeal as have been provided for suits tried in the first instance by sudder ameens, and that one of those rules is, that "in appeals from the decisions of the moonsiffs, or sudder ameens, the decisions of the zillah or city judge shall be final." I question very much whether the framers of Act XXV. 1837, ever dreamed of a modification of Clause first, Sec. 28, Reg. V. of 1831; on the contrary, I am convinced it was an unintentional omission, that immediately after Sec. 7 of the said Act, a provision similar to the one contained in Sec. 6 was not inserted, regarding suits within the competency of sudder ameens; but now something must be done, for as the constructions of the law by the two courts are widely different, so must be their pratice. No majority can decide the matter, and I see that we have nothing for it but to recommend that a declaratory law be passed, which shall contain the particular information which is at present so much needed, viz. "whether in suits within the competency of a sudder ameen to decide, but referred to and decided by a principal sudder ameen, special appeals are, or are not, admissible by the Sudder Dewanny Adawlut."

(signed) *H. H. Thomas,*
Officiating Judge.

Allahabad, 19 March 1841.

(No. 3794.)

From *J. Hawkins,* Esq., Register to the Court of Sudder Dewanny Adawlut, to *M. Smith,* Esq., Officiating Register of the Sudder Dewanny Adawlut, in the North-western Provinces.

Sir,

Sudder Dewanny Adawlut.
Present:
R. H. Rattray, C. Tucker, E. Lee Warner, and D. C. Smyth, Esqrs. Judges; and J. F. M. Reid, Esq. temporary Judge.

I AM directed by the Court to acknowledge the receipt of your letter, No. 1876. of the 22d ultimo, and to state in reply, that they admit the distinction which the Western Court have drawn between suits decided by principal sudder ameens, as such, and those decided by them in the capacity of sudder ameens, supposing them to have been appointed also to the lower grade, as appears to have been done in the Western Provinces, to avoid the contingency of a special appeal being preferred to the Sudder Court in suits below Rs 1,000 in amount; but as, in these provinces, principal sudder ameens have never been invested with the powers of sudder ameen, but have nevertheless had suits below Rs 1,000 in amount referred to them for trial, the Court are desirous of obtaining the opinion of the Western Court, whether suits decided under these circumstances are, or are not, specially appealable to the Sudder?

I have, &c.

(signed) *J. Hawkins,*
Register.

Fort William, 23 October 1840.

(C.) No. V.
Special Appeals.

(No. 2217.)

From *M. Smith*, Esq., Officiating Register, Sudder Dewanny Adawlut, N. W. P., to *J. Hawkins*, Esq., Register to the Court of Sudder Dewanny Adawlut, Fort William.

Sudder Dewanny Adawlut, N. W. Provinces. Present: W. Lambert, B. Tayler, and F. Currie, Esqrs. Judges; and G. P. Thompson, Esq. officiating Judge.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 3794, dated 23d ultimo, in which, while the distinction drawn by this Court between suits decided by principal sudder ameens, as such, and as sudder ameens, is admitted, the further opinion of the Western Court is asked in regard to suits of the latter description being specially appealable or not to the Sudder Dewanny Adawlut, with reference to the fact of the non-investment, in the lower provinces, of principal sudder ameens with the powers of sudder ameen.

Terms of Act XXV. of 1837 do not seem to make special authority for principal sudder ameens trying suits as sudder ameens necessary. The point of difference in the Lower Provinces, noticed by Calcutta Court, induces no change of former opinion in this court.

2. In reply I am desired to say, that it does not appear to the Court, that under the terms of the Act, and adverting to its presumed object, as understood by them, any formal investment of the nature described was necessary, or that a special authority is more needed in the case of suits cognizable by a sudder ameen being tried by a principal sudder ameen, than in that of cases cognizable, ordinarily, by a munsiff being tried by the same officer. The Court are not, therefore, of opinion, that the circumstances of difference noticed constitute any ground for departing from the view which they originally took of the question.

I have, &c.

Allahabad,
20 November 1840.

(signed) *M. Smith*,
Offg Regr.

(No. 486.)

Sudder Dewanny Adawlut. Present: R. H. Rattray, C. Tucker, E. Lee Warner, and D. C. Smyth, Esqrs. Judges, and J. F. M. Reid, Esq. temporary Judge.

From *J. Hawkins*, Esq. Register to the Court of Sudder Dewanny Adawlut, to *M. Smith*, Esq. Officiating Register, Western Court.

Sir,

I AM directed to transmit to you, to be laid before the Western Court, copy of a resolution this day recorded by this Court, on the subject of the admission of special appeals, in certain cases decided by principal sudder ameens, under Regulation V. 1831.

I have, &c.

Fort William,
5 February 1841.

(signed) *J. Hawkins*, Register.

RESOLUTION of the Presidency Court of Sudder Dewanny Adawlut, under date the 5th February 1841.

Present:—R. H. Rattray, C. Tucker, E. Lee Warner, and D. C. Smyth, Esqrs. Judges; and J. F. M. Reid, Esq. Temporary Judge.

Read the following Letters:

Western Court, No. 1876, 22d September last.
Presidency Court, No. 3794, 23d October last.
Western Court, No. 2217, 20th November last.

Read also a minute recorded by Mr. E. Lee Warner, after hearing the arguments of the vakeels, regarding the finality of the decisions of the zillah judges in appeals from the judgments of principal sudder ameens in suits within the competency of the inferior tribunals.

Read

(C.) No. V.
Special Appeals.

Read again the Resolution of the 14th August last.

Resolution.—The members of this Court being unanimously of the opinion recorded in the Resolution above mentioned, the Court resolve that that Resolution be now acted upon in this Court; and that the special appeals pending in this Court, which it was determined should lie over, be now taken up and decided in due course.

Ordered.—That a copy of this Resolution be forwarded to the Western Court for their information, and that copies of the same be laid before each Judge of this Court.

(True copy.)

(signed) *J. Hawkins,* Register.

Correspondence alluded to in Italics, in Note in Margin of Paragraph 1, *of my Letter.*

(No. 192.)

From *J. Hawkins,* Esq. Register to the Court of Sudder Dewany Adawlut, to *M. Smith,* Esq. Officiating Register to the Sudder Dewany Adawlut, North Western Provinces.

Sudder Dewany Adawlut. Present: R. H. Rattray, C. Tucker, E. Lee Warner, and D. C. Smyth, Esqrs. Judges, and J. F. M. Reid, Esq. temporary Judge.

Sir,

THE Court direct me to transmit to you for the information of the Western Court, the accompanying copy of a letter (No. 1727 of the 10th November last) from the government of Bengal, and of its enclosure, and of the reply made thereto under this day's date.

I have, &c.

Fort William, 8 January 1841.

(signed) *J. Hawkins,* Register.

Correspondence alluded to in Italics, in Note in Margin of Paragraph 5, *of my Letter.*

(No. 1745.)

From *J. Hawkins,* Esq. Register to the Court of Sudder Dewany Adawlut, to *M. Smith,* Esq. Register of the Sudder Dewany Adawlut, North Western Provinces.

Sir,

I AM directed by the Court to transmit for the consideration and opinion of the Judges of the Western Court, the accompanying copy of a letter, No. 668, dated 14th ultimo, from the secretary to the government of Bengal, in the judicial department, and of its enclosure, in regard to the mode of promulgating the constructions of the Courts of Sudder Dewany Adawlut and Nizamut Adawlut, and at the same time to communicate the following observations on the subject.

Sudder Dewany Adawlut. Present: R. H. Rattray, C. Tucker, E. Lee Warner, and D. C. Smyth, Esqrs. Judges, and J. F. M. Reid, Esq. temporary Judge.

2. The letter of the secretary to the Supreme Government of the 30th March embraces two important questions.

1st. The way in which differences of opinion between the Calcutta and Allahabad Courts ought to be disposed of, and

2dly. Whether the present system of circulating constructions of regulations made by the Sudder Courts, in consequence of special references to them, by the subordinate authorities, ought to be continued.

3. The Court observe, that the Courts of Sudder Dewany and Nizamut Adawlut are authorised by law, whenever the inferior tribunals construe the law and regulations of Government in a different sense from the construction given them by their immediate superiors, to declare what the real meaning of any part of the regulations may be, and their determination is to be held final and conclusive. Should these Courts have any doubts with respect to the meaning of a regulation, they are directed to report the case to Government, not that the Government may decide the point, but that a new regulation may be framed to explain the doubt; and should any case be referred for the decision

Reg. 10, 1796.

(C.) No. V.
Special Appeals.

sion of the Sudder Dewany and Nizamut Adawlut, in which they may be of opinion that the case is not sufficiently provided for by the Regulations, they are then to propose a new law in the mode prescribed by Regulation XX., 1793.

4. The above rules appear to the Court to provide for every practical difficulty; and all that they now consider necessary, is that the two courts (viz. the Calcutta and Allahabad Courts) should exercise the same powers which were vested in the old Court of Sudder Dewany and Nizamut Adawlut, before the enactment of Regulation VI. 1831; they would therefore propose that the second paragraph of Judicial Resolution of the 6th December 1831 should be rescinded, that the Government should abstain in all cases from any interference with the judicial functions of the courts of law, except in the mode prescribed by Regulation X. 1796, and that in all cases of difference between the Judges of the Presidency and Allahabad Courts, the matter should after due discussion and the exchange of Minutes, be determined by a majority of voices of the two courts, agreeably to the provisions of Section 6, Regulation II. of 1801.

5. With regard to the second point, viz. the promulgation of the Constructions of Regulations issued to the subordinate courts by the Sudder Dewany and Nizamut Adawluts, it appears to the Court that the Supreme Government are not fully aware of the nature of the references made to them, or of the matters contained in their constructions and circular orders. The Court observe, that the duty of the superior courts is simply to give to the subordinate tribunals a fair and honest construction of the Regulations in all cases wherein those tribunals may have doubts, and wherein the meaning may be sufficiently clear to men of ordinary understandings; and a reference to their book of constructions and circular orders will, they think, at once satisfy the Supreme Government, that in the great bulk of the references made by the inferior authorities, such is the course that has been followed by the Courts of Sudder Dewany Adawlut and Nizamut Adawlut.

6. The constructions are in fact almost all simple rules of practice, not rules of law. So long indeed as the present system of removing civil servants from one department of the state to another, obtains, and so long as the Courts of Sudder Dewany and Nizamut Adawlut are considered by the home authorities to be Boards, not only of legal but of moral supervision, such must, they consider, continue to be the duty of the highest superintending authorities; as regards the circular orders, they are almost entirely confined to the duty of prescribing forms for conducting trials and for preparing periodical statements, and calling attention to particular points of the Regulations which have been apparently neglected by the subordinate authorities in cases coming before the Sudder Dewany and Nizamut Adawlut, and which omission it is, in their opinion, the bounden duty of the superior courts to notice.

7. Under the above circumstances the Court would suggest that a reply be submitted, recommending to Government that all points of difference between the two courts be decided by a majority of voices of the judges of the two courts; that the courts abide strictly by the rules of Regulation X. 1796, confining themselves to the duty of explaining to the inferior tribunals the meaning of any law or regulation, in cases wherein it may appear to the Courts of Sudder Dewany and Nizamut Adawlut that the law or regulation is sufficiently clear; giving general instruction to the inferior tribunals regarding the mode of conducting their duties, never taking upon themselves to decide doubtful points of law, which may be mooted in cases pending before the inferior tribunals, and cautiously abstaining from interfering in any way with suits pending before the subordinate courts, except after a regular judicial investigation.

8. With reference to the concluding part of the last paragraph, and in order to meet the cases in which, under the existing law, the decision of the zillah judge is final, the Court would propose to suggest to Government the expediency of rescinding Clause 1, Section 4, Regulation II. 1825, and re-enacting Clause 1, Section 3, Regulation IX. 1819, with a few verbal alterations; by which course all cases of doubt and difficulty on the score of law can be brought before the Sudder Court for judicial investigation and decision.

I have &c.

Fort William, 29 May 1840. (signed) *J. Hawkins*, Register.

(C.) No. V.
Special Appeals.

(No. 1187.)

From *M. Smith*, Esq. Officiating Register to the Court of Sudder Dewany Adawlut, North Western Provinces, to *J. Hawkins*, Esq. Register to the Court of Sudder Dewany Adawlut, Fort William.

Sir,

I AM directed to acknowledge the receipt of your letter, No. 1745, dated 29th ultimo, communicating the remarks and opinion of the Presidency Court upon the question raised by the Legislative Council regarding the alteration of the existing course on occasions of a difference of opinion between the Sudder Courts, and respecting the promulgation of constructions of law by circular orders; and in reply I am instructed to request you will refer the court to my address, No. 1034, dated 22d idem, which, with its enclosures, had not come under the consideration of the Calcutta Court, at the time of writing your letter under acknowledgment, as it was not despatched hence till after that date.

S. D. A. N. W. P. Present: W. Lambert, B. Tayler, and F. Currie, Esqrs. Judges, and G. P. Thompson, Esq. Officiating Judge.

2. From a perusal of the papers which accompanied that communication the Presidency Court will see that this Court generally agree in the view taken by them of the subject, and expressed in para. 7 of your present letter; but on certain points of difference among the judges of the Allahabad Court the sentiments of your court are still looked for.

3. With regard to your final paragraph, which touches on the mode of meeting the cases in which, under the existing law, the decision of the zillah judge is final, and proposes to suggest the expediency of rescinding Clause 1, Section 4, Regulation II. of 1825, and re-enacting Clause 1, Section 3*, Regulation IX. of 1819, with some verbal alterations, I am directed to state, that this court do not quite perceive how this will meet what is required, since Clause 2, Section 2, Regulation IX. of 1819, refers to points of justice and not law, and (the jurisdiction of the court remaining the same) merely extends the grounds on which a special appeal would be admissible. This Court would wish to be informed whether the rescission of Clause 1, Section 28, Regulation V. of 1831, is not also contemplated by your court.

I have, &c.

Allahabad,
19 June 1840.

(signed) *M. Smith*,
Officiating Register.

(No. 1972.)

From *J. Hawkins*, Esq. Register to the Court of Sudder Dewany Adawlut, to *M. Smith*, Esq. Officiating Register of the Sudder Dewany Adawlut.

Sudder Dewany Adawlut. Present: R. H. Rattray, C. Tucker, and D. C. Smyth, Esqrs. Judges, and J. F. M. Reid, Esq. temporary Judge.

Sir,

I AM directed by the Court to acknowledge the receipt of your letter, No. 1034, of the 22d ultimo, and to state that they await a reply to my letter, No. 1745, of the 29th idem, on the same subject, before they submit the correspondence to the Government.

2. As regards the mode of deciding points, when the eight permanent judges of the two courts are equally divided (a case very seldom likely to occur), the Court are of opinion, that the best way of disposing of the question will be then to submit the matter for the judgment of the temporary judge who may have been longest attached to either court.

I have, &c.

Fort William, 19 June 1840.

(signed) *J. Hawkins*, Register.

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* Apparently misquoted for Cl. 2, Sec. 2, Reg. IX. of 1819, which is repealed by Cl. 1, Sec. 4, Reg. II. of 1825.

(C.) No. V.
Special Appeals.

(No. 1284.)

From *M. Smith*, Esq. Officiating Register to the Court of Sudder Dewany Adawlut, North Western Provinces, to *J. Hawkins*, Esq. Register to the Court of Sudder Dewany Adawlut, Fort William.

Sir,

S. D. A. N. W. P. Present: W. Lambert, B. Tayler, and F. Currie, Esqrs. Judges, and G. P. Thompson, Esq. Officiating Judge.

I AM directed to acknowledge the receipt of your letter, No. 1972, dated 19th ultimo, and with reference to its second para., which contemplates as the best mode of procedure in relation to questions on which the eight permanent judges of the two courts may be equally divided, the submission of the point for the judgment of the temporary judges who may have been longest attached to either court, to say that, in the opinion of this Court, the adoption of such a course would be to base a permanent rule upon a temporary arrangement, and would involve a solecism in principle; and the Court are accordingly rather disposed to adhere to their former proposition, as developed in the Minutes recorded by the judges of this Court.

2. On the other points there seems to exist no difference of opinion requiring further discussion.

I have, &c.

Allahabad,
3 July 1840.

(signed) *M. Smith*,
Officiating Register.

(True copies.)

(signed) *M. Smith*, Register.

(True copies.)

(signed) *J. Thomason*,
Secretary to the Government, N. W. Provinces.

FORT WILLIAM, Legislative Department, 19th July 1841.

Legis. Cons. 19 July 1841. No. 47.

THE following draft of a proposed Act was read in Council for the first time on the 19th July 1841.

ACT No. — of 1841.

An Act for amending the Rules of Special Appeals.

1. It is hereby enacted, that Clauses 1, 2 and 4, Section 2, Regulation XXVI. 1814; Section 7, Regulation XIX. 1817; Sections 2, 3, 4, 5 and 6, Regulation IX. 1819; Clause 1, Section 28, Regulation V. 1831; and Section 6, Act XXV. of 1837 of the Bengal Code, be repealed.

2. And it is hereby enacted, that from and after the day of 1841, a second or special appeal shall lie to the Courts of Sudder Dewanny Adawlut, at Calcutta and Allahabad, respectively, from all decisions passed in regular appeals in any civil court in the manner hereinafter specified.

3. And it is hereby enacted, that except in cases in which the petition relates to a decision passed in regular appeal by a zillah or city judge, every application for the admission of a special or second appeal shall be heard within the period limited for the admission of a regular appeal by the judge of the zillah or city within which the regular appeal has been decided; and every application for the admission of a special or second appeal against a decision passed in regular appeal by a zillah or city judge, shall in like manner be heard by a single judge of the Court of Sudder Dewanny Adawlut.

4. And it is hereby enacted, that no special or second appeal shall be admitted in any case, unless the judgment appealed against be inconsistent with some established judicial precedent, or involve some question of law, usage, or practice, upon which there may exist reasonable doubts.

5. And it is hereby enacted, that the judge by whom such application for the admission of a second or special appeal may be heard, shall call before him the special appellant, or his vakeel or agent, and shall, at his discretion, call for and peruse any document forming part of the record of the cause which he may deem proper, and shall, by such other inquiries as he may consider necessary, determine the point or points on which the appeal is liable, under this

this Act, to be specially tried by the Courts of Sudder Dewanny Adawlut; and shall reduce the said point or points to writing in the form of a certificate, and shall transmit the same in the vernacular language, together with an English translation thereof, attested by his official seal and signature, with the original petition for the admission of the second or special appeal, and copies of the decrees passed in the case to the register of the Courts of Sudder Dewanny Adawlut, to be tried by those courts in due course; and it shall be lawful for the judge to reject any such petition at his discretion, and his order so rejecting a petition for a special or second appeal shall be final.

6. And it is hereby enacted, that the Courts of Sudder Dewanny Adawlut shall in every case transmitted to or admitted by them, try and determine the point or points certified as above enacted, and no other point or part of the case whatever.

7. And it is hereby enacted, that it shall be competent to the Courts of Sudder Dewanny Adawlut, in any case in which the special ground of appeal may appear to have been incorrectly or incompletely certified by a zillah or city judge, to return the certificate for amendment; or in cases in which it may appear to have been improperly transmitted, to annul the certificate altogether, without requiring the attendance of the special appellant or his vakeel or agent.

8. And it is hereby enacted, that nothing contained in this Act shall be construed to interfere with the authority vested in a single judge of the Court of Sudder Dewanny Adawlut, or in a zillah or city judge, under the provisions of Regulation IX. 1831, and Act VII. of 1838, of issuing any injunction to the lower courts, for the revision of any case on the grounds and in the manner laid down by that Regulation and Act.

9. And it is hereby enacted, that nothing contained in this Act shall affect the trial of second or special appeals which shall have been admitted and be pending in appeal at the time of the passing of this Act, and that all such second or special appeals shall be tried and decided in the same manner as if this Act had not passed.

Ordered, that the draft now read be published for general information.

Ordered, that the said draft be reconsidered at the first meeting of the Legislative Council of India after the 19th day of September next.

(signed) *T. H. Maddock,*
Sec^{y} to the Gov^{t} of India.

(No. 95.)

From *T. H. Maddock*, Esq. Secretary to the Government of India, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal.

Legis. Cons. 19 July 1841. No. 48.

Sir,

With reference to your letters, Nos. 1396 and 858, dated respectively the 22d August 1839, and 27th May 1841, with enclosures, I am directed to transmit to you, for submission to the Right honourable the Governor of Bengal, the accompanying draft of a proposed Act, this day read in Council for the first time, for amending the rules of special appeals, and which, his Lordship will observe, embodies the amendments proposed by the Sudder Court in their register's letter, No. 1704, of the 14th May last.

Legislative Dep.

2. The original enclosure of your letter of 27th May last, is returned herewith.

I have, &c.

Council Chamber,
19 July 1841.

(signed) *T. H. Maddock,*
Sec^{y} to the Gov^{t} of India.

(C.) No. V.

Special Appeals.

(No. 88.)

Legis. Cons. 19 July 1841. No. 49.

From *T. H. Maddock*, Esq. Secretary to the Government of India, to *J. Thomason*, Esq. Secretary to the Government, North Western Provinces.

Sir,

Legislative Dep.

WITH reference to your letter, No. 887, dated the 13th May last, with enclosures, I am directed to transmit to you, for submission to the Honourable the Lieutenant-governor North Western Provinces, the accompanying draft of a proposed Act, this day read in Council for the first time, for amending the rules of special appeals.

I have, &c.

(signed) *F. J. Halliday*,
Secy to the Govt of India.

Fort William, 19 July 1841.

Legis. Cons. 9 August 1841. No. 22.

(No. 113.)

From *T. H. Maddock*, Secretary to the Government of India, to *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission.

Sir,

WITH reference to your demi-official communication of the 7th instant on the subject, I have the honour, by direction of the Right honourable the Governor-general in Council, to transmit to you, for consideration of the Law Commission, the papers noted in the margin, connected with the subject of the draft Act for amending the rules of special appeals.

2. You are requested to return the original papers when they are no longer required.

I have, &c.

(signed) *T. H. Maddock*,
Secretary to the Government of India.

Council Chamber, 9 August 1841.

Legislative Consultation, 10 October 1836, No. 16 to 19
" 4 Dec. 1837 " 10 & 11
" 2 April 1838 " 26 to 31
" 14 May 1838 " 23.
" 16 July 1838 " 18 to 20.
" 6 August 1838 " 12 to 15
" 17 Dec. 1838 " 20 to 22
" 8 July 1839 " 2 to 5
" 21 October 1839 " 10 to 12
" 11 Nov. 1839 " 23 to 27
" 30 Dec. 1839 " 19 to 20 A
" 30 March 1840 " 3 to 6
" 30 March 1840 " 12 to 19
" 13 July 1840 " 12
" 19 October 1840 " 11 to 13
Copies " 5 April 1841 " 1 to 7
Copies " 19 July 1841 " 42 to 49

Legis. Cons. 4 Oct. 1841. No. 1.

(No. 1370.)

From *F. J. Halliday*, Esq. Secretary to the Government of Bengal, to *T. H. Maddock*, Esq. Secretary to the Government of India, Legislative Department.

Sir,

Judicial Dep.

I AM directed by the Right hon. the Governor of Bengal to request that you will submit for the consideration and orders of the Supreme Government, the accompanying letters* relating to the proposed "Act for amending the Rules of Special Appeals," a copy of which was received with your letter, No. 95, of the 19th July last, and is now returned with the Sudder Court's amendments.

* Register Sudder Dewany Adawlut, No. 3018, of the 20th ultimo; Additional Judge of Chittagong, No. 103, of the 25th ultimo.

I have, &c.

(signed) *F. J. Halliday*,
Secy to the Govt of Bengal.

Fort William, 7 September 1841.

P.S. Please to return the enclosures.

(C.) No. V.
Special Appeals.

(No. 3018.)

From *J. Hawkins*, Esq. Register to the Court of Sudder Dewany Adawlut, to *F. J. Halliday*, Esq. Secretary to the Government of Bengal, in the Judicial Department.

Legis. Cons. 4 Oct. 1841. No. 2.

Sir,

I AM directed by the Court to acknowledge the receipt of the Resolution of the Right hon. the Governor of Bengal, No. 1229, of the 3d instant, and to state for his Lordship's information, that they have no further suggestions to offer respecting the draft of Act for amending the law of special appeal; but the suggestion in para. 3 of my letter, No. 1704, of the 14th May last, not being sufficiently specific, the alteration intended by the Court has been made in the printed draft received with the Resolution, both which are herewith returned.

Sudder Dewany Adawlut. Present: C. Tucker, and E. Lee Warner, Esqrs. Judges, and J. F. M. Reid, Esq. temporary Judge.

I have, &c.

Fort William,
20 August 1841.

(signed) *J. Hawkins*,
Register.

(No. 103.)

From *F. Skipwith*, Esq. Additional Judge of Zillah Chittagong, to *F. J. Halliday*, Esq. Secretary to Government, Judicial Department.

Sir,

IN the proposed Act for amending the rules of special appeals read in Council for the first time on the 19th July 1841, I beg respectfully to suggest, that in the 4th section provision be made for the admission of an appeal, when the judgment against which the appeal is preferred shall, from the exhibition of another decree of the same court, or of another court having jurisdiction in the same suit, or in a suit founded on a similar cause of action, clearly appear to be in opposition thereto or inconsistent with such other judgment.

2. The words quoted above are the substance of Sect. 9, Regulation XIX. 1817, which is proposed to be rescinded; but I would add a proviso, that such final decrees must have been exhibited at the trial of the regular appeal, or good and satisfactory cause be shown for the omission.

3. Nearly all the special appeals pending in this district are founded on this Regulation, but for the purpose of retarding the decision of the suit, the previous final decree is seldom exhibited in the court of regular appeal.

I have, &c.

Additional Judge's Office,
Zillah Chittagong,
25 August 1841.

(signed) *F. Skipwith*,
Additional Judge.

(No. 1716.)

From *J. Thomason*, Esq. Secretary to the Government, North Western Provinces, to *T. H. Maddock*, Esq. Secretary to the Government of India, Legislative Department, Fort William.

Legis. Cons. 4 Oct. 1841. No. 3.

Sir,

IN reply to your letter, dated 19th July last, No. 88, I am directed to request that you will lay before the Right hon. the Governor-general, the annexed copies of letters from the Court of Sudder Dewany, dated the 9th and 30th July, containing their sentiments on the proposed enactment for amending the rules of special appeals.

Judicial Dep.

2. The Honourable the Lieutenant-governor is disposed to concur with the Court of Sudder Dewany Adawlut at Allahabad in the general drift of the remarks they have recorded on this subject.

3. Sec. 4 of the proposed Act appears to agree in its main provisions with Sec. 2, Reg. XIV. 1814, which mainly at present regulates the admission of special appeals. This law has in practice been found to restrict the power of admitting special appeals within such narrow limits as amounts to an absolute denial of justice in many cases. Individual instances might easily be adduced

(C.) No. V.
Special Appeals.

to show how the rule in question has operated. His Honour cannot contemplate without great apprehension this legal prohibition as it were of redress in cases where injustice is palpable. The Court rightly point out the altered state of circumstances, which renders the maintenance of these restrictions neither necessary nor politic. It is now most desirable to increase the facilities for the maintenance of an active and searching control by the superior over the inferior tribunals, and with this view a greater latitude should be allowed for the admission of appeals.

4. The Court, in paragraph 15 of their letter of July 9th, advocate the revival of the provisions of Sec. 2, Reg. IX. 1819, as regards all appeals from zillah judges, with exception to suits for personal property below 150 Rs. in amount, and also in special appeals to zillah judges from the decisions of munsiffs. The Regulation in question provides for the admission of an appeal "whenever, on a perusal of the decree of the lower court, there may appear strong probable grounds, from whatever cause, to presume a failure of justice."

5. His Honour would admit a special appeal, not only in the cases stated in the draft Act, but also whenever it appears on the face of the proceedings, that the decision affirms as a fact that which is not established by the evidence recorded in the case, or passed over in silence that which is stated in the evidence and may not be consistent with the assumption on which the decree may be founded; or in other words, he would consider the incompatibility of the decree with the recorded evidence as a good cause for special appeal. This object might be attained by adding to Sec. 4 of the proposed draft, "or be incompatible with the recorded evidence." This would render the grounds of appeal less vague than proposed by the Court of Sudder Dewany Adawlut, and would probably answer every necessary purpose.

6. The Court would leave to the zillah judges the trial of all special appeals, in cases so appealable to them, whilst the proposed Act would make such appeals cognizable only by the Court of Sudder Dewany Adawlut alone, on certificates of admissibility given by the zillah judge, withheld at his discretion, but capable of amendment or annulment by the higher tribunal. In this respect his Honour is disposed to prefer the provisions of the draft Act. It extends the sphere of control of the Sudder Dewany Adawlut, increases their power of superintending the zillah judges, and is likely to conduce greatly to sound and uniform administration of the law.

7. In conclusion, I am directed to express concurrence in the concluding paragraph of the Court's letter, and to observe with great satisfaction, that the files of the court are now so clear from arrear, that they are well able to address themselves with vigour to the administration of this important part of their duties. If the case should be otherwise in the lower provinces, it is hoped that the press of business there will not be allowed to operate so as to occasion the imposition of unnecessary or injurious restrictions to the effective administration of justice where no such pressure exists. In proof of the present state of work in the Court of Allahabad, copies are enclosed of the last return, and of a running abstract, showing the state of the files in each month of the current year.

I have, &c.

Agra, 13 September 1841.

(signed) *J. Thomason,*
Secy to the Govt, N. W. P.

ABSTRACT.

IN reply to letter dated 19th July 1841, transmitting copies of letters from the Sudder Dewany Adawlut, North West Provinces, containing the sentiments of the Court in the proposed enactment for amending the rules of special appeals.

(C.) No. V.
Special Appeals.

Legis. Cons.
4 Oct. 1841.
No. 4, Encl.

(No. 1164.)

From *M. Smith*, Esq. Register to the Court of Sudder Dewany Adawlut, North West Provinces, to *J. Thomason*, Esq. Secretary to the Honourable the Lieut-Governor in the Judicial Department, North West Provinces, Agra.

Sir,

S. D. A. N. W. P. Present: B. Tayler, G. P. Thompson, and F. Currie, Esqrs. Judges, and H. H. Thomas, Esq. Officiating Judge.

In pursuance of your intention, noted in *italics* in the margin of the opening paragraph of my letter, No. 656, dated 10th of April last, and with reference to the letter of the register to the Calcutta Court, dated 8th January last, No. 192, copy of which, as well as of its annexures, was therewith submitted, I am directed now to request, that you will lay this letter before the Honourable the Lieut.-governor for consideration, and eventual transmission to the Supreme Government, on the subject of the proposed alteration in the law of special appeal, on the plan of opening the Sudder Court to all special appeals, and constituting it the sole tribunal for hearing this description of cases.

2. The sentiments of the Government of India on this question are stated at length in Mr. Secretary Halliday's address to the secretary to the government of Bengal, dated 19th October 1840, No. 441, which concludes with the expression of a desire, that the opinions therein stated should be referred to the two courts, that, if they concurred with the Supreme Government, the necessary measures might be taken to carry the plan into effect.

3. In their address of the 8th January last, to the government of Bengal, the Court of Calcutta accordingly stated an opinion, that the proposed plan of opening the Sudder Court to all special appeals was liable to serious objection from the large number of such appeals which would be preferred in consequence, and which would increase beyond due bounds the business of the Court. The Presidency Court added, that in their view, the object of Government would be attained by permitting the zillah courts to certify to the Court the propriety of admitting an appeal in cases involving points of law, not before judicially decided.

4. By this court the existing law regarding special appeals has been long considered defective, and a short notice of the various regulations that have from time to time been enacted, for restricting or extending the admission of appeals of this nature, will form no unsuitable preface to the further observations of the court on the subject, and to the enunciation of the remedy which they would propose.

5. First, the following enactments, viz. Sec. 24, Reg. XLIX. 1803, and Sec. 10, Reg. II. and Clauses 2 and 3, Sec. 9, Reg. VIII. 1805, empowered the Provincial and Sudder Courts to admit a special appeal from the decrees of the lower courts, "if on the face of the decree, or from any information before the court of appeal, it shall appear to them erroneous or unjust, or if from the nature of the cause, as stated in the decree or otherwise, it shall appear to them of sufficient importance to merit a further investigation in appeal."

6. These provisions appearing in process of time to have been found to give too great a latitude to the courts, were accordingly modified by Sec. 2, Reg. XXVI. 1814, "with a view to the more speedy administration of civil justice." That section sets forth that "no special or second appeal shall be admitted, unless upon the face of the decree, or of documents exhibited with it (assuming all the facts of the case as stated in the decree), the judgment shall appear to be inconsistent with some established judicial precedents, or with some regulation in force, or with the Hindoo and Mahomedan law, in cases which are required to be decided by those laws, or with any other law or usage which may be applicable to the case, or unless the judgment shall involve some point of general interest or importance, not before decided by the superior courts. Sec. 7, Reg. XIX. 1817, has recognised additional grounds for the admission of special appeals, which seem to have been unintentionally omitted by the framers of Reg. XXVI. 1814, the spirit of which enactment was however maintained.

7. Reg. IX. 1819 follows, declaring * that "experience has shown that it would be conducive to the ends of civil justice to modify and extend the existing rules, which limit to certain specific grounds the admission of special

* Preamble.

(C.) No. V.
Special Appeals.
Clause 2, sec. 2.

appeals by the Sudder Dewany Adawlut," and providing for their admission "whenever on a perusal of the decree of the lower court, there may appear strong probable ground, from whatever cause, to presume a failure of justice."

8th. This practice continued till 1825, when it being discovered that special appeals had become too numerous, occupied too much time, and " impeded the trial and decision of other more important cases, whilst at the same time such applications on insufficient grounds were encouraged by the indefinite terms of Clause 2, Sections 2. 9, 1819," that clause was accordingly, " with a view to provide against the continuance of these impediments to the general administration of civil justice," rescinded by Clause 1, Section 4, Regulation II. 1825, and the superior courts were directed to be guided in the admission of special appeals by the enactments enumerated in the margin.

Sec. 2, Reg. XXVI. 1814.
Sec. 7, Reg. XIX. 1817.
Sections 3, 4 & 5, Reg. IX. 1819.

9. The Court observe in this place, that while the restrictions on the admission of special appeals imposed in 1814 and revived in 1825, are up to the present day in force, the rules which might have been indispensable at either of those junctures by no means apply to the state of things now, which is marked by improvements and changes as important as various. Among them are a Court of Sudder Dewany and Nizamut Adawlut established in the north western provinces, the provincial courts of appeal abolished, and the arrears of suits which loaded them, cleared away; the primary award of all the litigated property in the country consigned to a class of uncovenanted and native judges; the zillah judges grown up into judges of appeal and circuit; an organised, regular, and active supervision in operation, such as in 1825 was not thought of; hopeless accumulations of civil business, which had encumbered the files for many years, mocking all attempts at their reduction, no longer in existence; the adjudication of suits, and the general dispatch of civil business accelerated in an extraordinary degree; all these circumstances go to prove that the rules prescribed then for the admission of special appeals are not requisite in the same rigour now, and that their relaxation would involve at this period none of the evils formerly experienced, or risks apprehended from the measure.

10. There are also other important points to be considered in reference to the change produced in our judicial system by the enactment of Regulation V. 1831. Firstly, as relates to the court of first instance and appeal, in which the great mass of the judicial business is determined. By the extension of the powers of munsiffs and sudder ameens, both in respect to the value of suits and to the making claims for real property recognisable by them, the most important cases, involving the most extensive interests, are tried in these courts, while by the creation of the office of principal sudder ameen, and the constituting it a tribunal of appeal from the munsiffs' and sudder ameens' decisions, a very large proportion of the whole judicial business is now finally determinable in the native tribunals, a special appeal from their decision lying only on the very restricted and limited points above noticed; and the cognizance of all questions on the general merits of the decisions being entirely excluded from the European judges; and, 3dly, as regards the restricted means of control over the judges possessed by the Court, and the little opportunity presented them of estimating the character of the decisions of those officers. Formerly, all suits exceeding Rs. 5,000 in value were tried by the judges; these were liable to a regular appeal to the Court, and though perhaps not many, they still supplied materials for testing the official fitness and qualifications of our judges. Under the existing system, all original suits, of whatever amount, are tried in the first instance by the principal sudder ameens, a very few, which may for special reasons be retained by the judge, excepted, consequently scarcely any decision of a judge can undergo the scrutiny of the Court, save in special appeal.

11. Nor does the trial of special appeals present for the most part any occasion to look into the character of the decision of the zillah court. The grounds on which a special appeal is prayed for, are required to be engrossed on the back of the petition of appeal, and on these alone it is frequently rejected. Most commonly the real question at issue turns on the facts of the case, the decision in which may be at variance with the evidence adduced, or may even have nothing to do with the point at issue. The vakeels therefore exert their ingenuity to show that the judgment appealed from is contrary to some law or established custom, and should they succeed in obtaining the reception of the appeal, they proceed to argue the case entirely on its merits. By Clause 1,

Section

Section 2, Regulation XXVI. 1814, and Construction No. 246, the supreme court is required to take the facts assumed by the lower court, and the only point left for them to determine is, not whether the lower has taken a correct view of the merits of the case, and passed a judgment on the points whereon the decision should properly rest, but whether the arguments based on the alleged facts are conformable to law.

12. In practice, the Court believe it would be commonly found that the district judges deviate from the strict interpretation of the law in the admission of special appeals, on grounds which would at once meet with rejection by the Sudder Court. In the event of the Court's rejection of an application after considering the grounds set forth in it, no insight is afforded into the proceedings of the judges' or principal sudder ameens' courts, as it would be fruitless labour to ascertain the merits of the decision, when, however unjust it might appear, the Court could not interfere to render justice. This remark applies with even greater force to the special appeals before the zillah courts. The Court have frequently seen decisions passed by a principal sudder ameen in appeal, which would have called for reversal in special appeal by the judge, had such a course been permitted by law; and they have often themselves been obliged to reject an application for special appeal when they felt that a manifest injustice had been committed by the decision of the zillah judge. The continuance of the present law therefore, must, the Court conceive, operate as a denial of substantial justice.

13. The monthly statements forwarded to the Court are in no way calculated to supply the defect. They afford no information of the character of a judge's proceedings, or means of judging how far he has properly considered a case, or passed a hasty decision in appeal without adverting to the pleas urged, or examining the record to see whether the facts are correctly stated, and supported by credible evidence. The use of the statements as a means of control and check is merely limited to the preventing an accumulation of arrears, by exacting a certain quantity of work without reference to its quality, and by compelling the courts to dispose of cases of long standing.

14. It may be also urged as an argument in favour of a change, that while the Court are required to nominate the three most deserving judicial officers for promotion, on the occurrence of any vacancy in the office of sudder ameen or principal sudder ameen, they possess no scale by which the relative merits of the uncovenanted judges can be tried, and are thus compelled to depend altogether on the character given of them by the judge; the Court's estimation of which must be much influenced by the degree in which their opinion of the judgment of that officer and the opportunities he may have had of forming one, is favourable or the reverse.

15. As a remedy for the above serious defects, the Court would now propose so to modify the law of special appeal, as to declare the admissibility by the Sudder Court of a special appeal from the decision of the zillah judge in all cases, with exception to suits for personal property below Rs. 150 in amount, on the extended grounds set forth in Sect. 2, Regulation IX. 1819, which should be re-enacted, the subsequent law, repealing it, being first rescinded, as well as Clause 1, Sect. 28, Regulation V. 1831. The extension of the grounds for the reception of special appeals by the revival of Sect. 2, Regulation IX. of 1819, should also be declared applicable to appeals of that description made to the zillah judges from regular appeals tried by principal sudder ameens, from decisions of the sudder ameens and munsiffs. The Court beg to propose this modification of the plan suggested by the government of India, which, they believe, will meet the ends of justice; though they recognise the principle contained in Mr. Halliday's letter, that, when practicable, special appeals should lie only to one, and that the highest tribunal.

16. It should be provided, that the judge of the Sudder Court, admitting the special appeal under the proposed rule, should state distinctly in his proceeding, and in an English note, the specific point or points on which the admission is grounded; and that such point or points, thus indicated, should alone be tried by the court. The rule, requiring the certificate of the vakeel or mookhtar on the back of the special appeal, to the effect that he has examined the grounds of the petition, and considers them sufficient, should also be maintained in full force. These and my other precautions might be included in rules to be laid down for regulating the practice of the court in

(C.) No. V.
Special Appeals.

this matter, so as to ensure uniformity of decision, and prevent the presentation of litigious appeals.

17. It might in many cases, the Court observe, require a very full investigation into the proceedings of both the lower courts before an order could be passed on the merits of the appeal; but even if ultimately rejected, the Court would still have thus had the opportunity of reviewing the decisions of those tribunals; and by recording a note at the time, of the nature of the decision for deposit with the register, would be able to collect materials from which some distinct judgment of the judicial efficiency of the subordinate courts might be in time deduced.

18. It only remains to notice, in regard to the objections taken by the Calcutta Court, that no apprehension is entertained by the Court of the effect of the proposed change being to overwhelm their file with business, or indeed induce a larger influx of special appeals than can be disposed of consistently with the prompt dispatch of the other duties of the Court. This appears to be shown by the subjoined statement, marked (L.), compiled from returns in the Court's office, which, on a combined calculation on a period of three years, of the proportion of special appeals admitted by the zillah judges from regular appeals decided by the principal sudder ameens, and of the proportion of special appeals likely to be admitted by the Court from decisions of judges in regular appeal from sudder ameens and moonsiffs, represents on a rough estimate the probable monthly income in the Court at 4,536.

I have, &c.

Allahabad, 9 July 1841. (signed) *M. Smith*, Register.

ABSTRACT.

Paras. 1, 2, 3. SUBJECT stated, viz. proposed alteration of law of special appeal, by opening the Sudder Court to all special appeals, and making it the sole court for hearing such appeals; allusion to opinion of Supreme Government, and of Calcutta Court, who object to plan, for reasons stated, and suggest another plan.

Paras. 4, 5, 6, 7, 8. Preparatory notice taken of various enactments made from time to time, restricting or extending the admission of special appeals; showing the state of the law in that particular at present.

Paras. 9 to 14 inclusive. Various arguments adduced in favour of altering that law; viz. numerous reforms in systems of judicial administration and practice; changes caused by Regulation V. of 1831; inadequacy of the law to afford redress, or enable the Sudder Court to obtain an insight into the proceedings of the lower courts, with a view to their control.

Paras. 15, 16, 17. Remedied arrangement stated, as proposed by Court, in modification of plan advocated by Government of India, and necessity of certain precautionary provisions noticed.

Para. 18. Objection of Presidency Court, that change would tend to overload their files with business, declared not to be applicable to probable state of things in Western Court.

(C.) No. V.
Special Appeals.

STATEMENT of APPEALS decided in the several Zillahs, in 1838, 1839, and 1840.

ZILLAH.	Regular Appeals from the Principal Sudder Ameen, decided by the Judge.	Special Appeals from the Principal Sudder Ameen, decided by the Judge.	Regular Appeals from the Sudder Ameens, decided by the Judge.	Regular Appeals from the Moonsiffs, decided by the Judge.	Regular Appeals from Sudder Ameens, decided by the Principal Sudder Ameen.	Regular Appeals from Moonsiffs, decided by the Principal Sudder Ameen.	Number of Special Appeals admitted by the Zillah Judges from Regular Appeals, decided by the Principal Sudder Ameens, in 1838, 1839, and 1840.
Delhi	66	80	48	110	70	357	105
Saharunpore	31	-	24	296	—	—	—
Meerut	255	123	-	164	-	788	133
Allighur	119	49	315	315	-	225	45
Meradabad	55	275	64	413	148	835	311
Bareilly	159	155	66	232	106	648	159
Agra	133	4	17	490	-	41	4
Furruckabad	153	23	9	559	3	275	21
Munpoorey	48	5	2	131	-	68	4
Etawah	23	-	17	96	-	39	—
Cawnpore	118	109	37	195	20	296	103
Futtehpore	113	22	-	273	-	217	22
Bundelkhund	59	56	52	79	-	217	68
Allahabad	64	29	67	363	61	182	33
Guruckpore	110	161	107	645	156	925	163
Azimgar	35	73	94	396	4	481	84
Jounpore	73	147	32	427	40	556	128
Mirzapore	213	284	64	351	30	398	231
Benares	84	22	85	722	-	66	26
Ghazeepore	130	47	184	841	-	441	65
	2,041	1,664	1,284	* 7,098	638	7,055	1,705

As 7,693 : 1,664 : 100 : 21·63 — The rate per cent. of the special appeals admitted by the zillah judges from regular appeals decided by the principal sudder ameens.

Then, If 100 : 21:63 : $\frac{8,382}{3}$: 544·32 — The number of special appeals likely to be admitted by the court from the decisions of judge's regular appeal from sudder ameens and moonsiffs in any one year, or 544·32. 45·36, the probable monthly income in the court.

(signed) *J. P. Ledlie*, Assistant Register.

(True copy.)

(signed) *M. Smith*, Register.

(No. 1252.)

From *M. Smith*, Esq. Register to the Court of Sudder Dewany Adawlut, Allahabad, to *J. Thomason*, Esq. Secretary to the Honourable the Lieutenant-Governor in the Judicial Department, North Western Provinces, Agra.

Sir,

WITH reference to the draft of a proposed Act for amending the rules of special appeals, read in Council for the first time on the 19th and published in the Calcutta Gazette of 21st instant, I am directed to state that the Court do not consider that any further remarks are necessary on the subject to which it relates, as elucidatory of their sentiments on the matter, beyond what is contained in my communication, No. 1164, dated 9th instant, to your address, which will doubtless have been laid before the Supreme Government before the period fixed for the second reading of the draft, 19th September next.

S. D. A. N. W. P.
Present:
B. Tayler, G. P. Thompson, F. Currie, Esqrs. Judges; and H. H. Thomas, Esq. Officiating Judge.

I have, &c.

(signed) *M. Smith*, Register.

Allahabad, 30 July 1841.

ABSTRACT.

REFERRING to draft of proposed Act for amending law of special appeal courts, sentiments stated to have already been communicated for submission to Supreme Government.

(True copies.)

(signed) *J. Thomason*,
Secy to Govt, N. W. P.

(C.) No. V.
Special Appeals.

ABSTRACT STATEMENT of Causes decided by the Court of Sudder Dewany Adawlut, North-Western Provinces, during the Month of July 1841, and of the Number depending at the end of that Month.

	Regular Appeals.				Special Appeals.			
	Decided on Trial.	Remanded.	Dismissed on default.	Adjusted or withdrawn.	Decided on Trial.	Remanded.	Dismissed on default.	Adjusted or withdrawn.
Mr. B. Tayler - -	2	–	–	–	–	–	–	–
Mr. G. P. Thompson -	–	1	1	–	–	1	–	–
Mr. F. Currie - -	1	–	–	1	–	–	–	–
Mr. H. H. Thomas -	–	2	–	–	2	–	–	–
Messrs. Thomas & Tayler.	–	–	–	–	–	–	–	–
Thompson & Currie -	–	–	–	–	1	–	–	–
Messrs. Tayler & Thomas.	1	–	–	–	–	–	–	–
Messrs. Thomas & Tayler.	1	–	–	–	–	–	–	–
Messrs. Currie & Thompson.	–	–	–	–	1	–	–	–
TOTAL - - -	5	3	1	1	4	1	–	–

	Regular.	Special.	Total.
Pending 30th June 1841.	107	30	137
Received in July 1841	11	7	18
Total - - -	118	37	155
Decided and adjusted or withdrawn.	7	4	11
Remanded - -	3	1	4
Total disposed of	10	5	15
Pending on the 31st July 1841.	108	32	140

Special Appeals:

Pending on 30th June 1841 -	19
Referred in July 1841 - -	21
Total - - -	40
Disposed of in July 1841 - -	17
Pending on 31st July 1841 -	23

1838.	1839.	1840.	1841.	Total.
2	7	54	77	140

Total Amount or Value, Company's rupees 165,905. 12. 7¼.

Besides the Decisions, Miscellaneous Orders were passed during the Month of July 1841, by the several Judges, as follows:—

	Miscellaneous Cases.	Miscellaneous Petitions.	Petitions of Special Appeals.	Total.
Mr. B. Tayler - - - - - -	16	65	4	85
Mr. G. P. Thompson - - - - -	11	56	2	69
Mr. F. Currie - - - - - -	24	62	7	93
Mr. H. H. Thomas - - - - -	22	45	4	71
TOTAL - - - - -	73	228	17	318

Certificates, &c. - - - - 116.

MEMORANDUM showing the Number of Cases finally disposed of, and Opinions, not being Final Judgments, recorded by the several Judges during the Month of July 1841.

	Final Judgment.		Opinions.	Total.
	Regular.	Special.		
Mr. B. Tayler - - - - - -	3	–	4	7
Mr. G. P. Thompson - - - - -	2	1	4	7
Mr. F. Currie - - - - - -	2	1	2	5
Mr. H. H. Thomas - - - - -	3	3	1	7
TOTAL - - - - -	10	5	11	26

S. D. A., N. W. P. Allahabad,
12 August 1841.

(signed) *M. Smith*, Register.

(No. 14.)

STATEMENT showing the Number of Appeals preferred to the Nizamut Adawlut from Sentences passed by the Commissioners of Circuit and Session Judges, in Criminal Trials; and from Orders passed by the Commissioners in Cases of a Miscellaneous Nature, during the Month of July 1841, with the Orders passed thereon.

	From Sentences of Commissioners of Circuit and Sessions Judges, in Criminal Trials, including Cases called for on inspection of the Statements.						From Orders passed by the Commissioners in Cases of a Miscellaneous Nature.					
	1. Pending on the 1st June 1841.	2. Preferred during the Month.	3. TOTAL.	4. Order, if confirmed.	5. Order Modified or Reversed.	6. Pending at the end of the Month.	7. Pending on the 1st July 1841.	8. Preferred during the Month.	9. TOTAL.	10. Appeals rejected as not Cognizable.	11. Cases referred for Orders of Government.	12. Pending at the end of the Month.
Delhi Division:												
Commissioners of Circuit - -	–	–	–	–	–	–	–	–	–	–	–	–
Session Judge of Delhi - -	–	1	1	–	–	1	–	–	–	–	–	–
Meerut Division:												
Commissioners of Circuit - -	–	–	–	–	–	–	–	–	–	–	–	–
Session Judge of Seharunpore -	–	3	3	–	–	3	–	–	–	–	–	–
Ditto - - of Meerut - -	1	–	1	–	1	–	–	–	–	–	–	–
Additional ditto of Boolundshuhur	2	–	2	–	–	2	–	–	–	–	–	–
Ditto - - of Allyghur -	–	–	–	–	–	–	–	–	–	–	–	–
Rohilcund Division:												
Commissioners of Circuit - -	–	–	–	–	–	–	–	–	–	–	–	–
Ditto - - of Kumoon -	–	–	–	–	–	–	–	–	–	–	–	–
Session Judge of Moradabad -	–	–	–	–	–	–	–	–	–	–	–	–
Ditto - - of Barelly -	–	–	–	–	–	–	–	–	–	–	–	–
Additional ditto of Rohilcund -	5	1	6	1	5	–	–	–	–	–	–	–
Agra Division:												
Commissioners of Circuit - -	–	–	–	–	–	–	–	–	–	–	–	–
Session Judge of Agra - -	1	–	1	–	1	–	–	–	–	–	–	–
Ditto - - of Furruckabad -	1	4	5	–	1	4	–	–	–	–	–	–
Ditto - - of Mynpoorey -	1	–	1	–	1	–	–	–	–	–	–	–
Allahabad Division:												
Commissioners of Circuit - -	–	–	–	–	–	–	–	–	–	–	–	–
Session Judge of Cawnpore -	–	–	–	–	–	–	–	–	–	–	–	–
Ditto - - of Futtehgurh -	–	–	–	–	–	–	–	–	–	–	–	–
Ditto - - of Bundelkund -	1	2	3	2	1	–	–	–	–	–	–	–
Ditto - - of Allahabad -	–	–	–	–	–	–	–	–	–	–	–	–
Benares Division:												
Commissioners of Circuit - -	–	–	–	–	–	–	–	–	–	–	–	–
Session Judge of Goruckpore -	–	–	–	–	–	–	–	–	–	–	–	–
Ditto - - of Azimghur -	–	–	–	–	–	–	–	–	–	–	–	–
Ditto - - of Jounpore -	–	–	–	–	–	–	–	–	–	–	–	–
Ditto - - of Mirzapore -	1	–	1	–	1	–	–	–	–	–	–	–
Ditto - - of Benares -	–	1	1	–	–	1	–	–	–	–	–	–
Ditto - - of Ghazeepore -	2	1	3	2	–	1	–	–	–	–	–	–
Saugor Division:												
Commissioners of Circuit - -	–	–	–	–	–	–	–	–	–	–	–	–
TOTAL - - -	15	13	28	5	11	12	–	–	–	–	–	–

ABSTRACT STATEMENT of Criminal Trials Decided and Disposed of by the Court of Nizamut Adawlut, North Western Provinces, in the Month of July 1841, and the Number Pending at the end of that Month.

	Trials referred under the Regulations.	Trials called for.	TOTAL.
Pending 1st July 1841 - -	27	15	42
Received in July 1841 - -	33	13	46
TOTAL - - -	60	28	88
Decided in July 1841 - -	50	16	66
Pending 31st July 1841 - -	10	12	22

Of the Trials Decided during the Month,	
Mr. Tayler recorded his opinion on - -	24
Mr. Thompson ditto - - ditto - -	26
Mr. Currie - ditto - - ditto - -	16
Mr. Thomas - ditto - - ditto - -	21
TOTAL - - -	87

N. A. North Western Provinces, Allahabad, 12 August 1841.

(signed) *M. Smith*, Register.

(C.) No. V.
Special Appeals.

MEMORANDUM of the Number of Cases Depending, Received, and Decided by the Court of Sudder Dewany Adawlut, in each Month, from January 1841.

MONTHS.	Depending.		Received during the Month.		Total.		Decided, Adjusted, or Withdrawn.		Depending at the end of the Month.	
	Regular.	Special.	Regular.	Special.	Regular.	Special.	Regular.	Special.	Regular.	Special.
January	90	27	2	3	92	30	8	1	84	29
February	84	29	10	1	94	30	2	1	92	29
March	92	29	12	10	104	39	4	3	100	36
April	100	36	16	2	116	38	5	4	111	34
May	111	34	8	6	114	40	11	7	108	33
June	*109	33	6	4	115	36	8	6	107	30
July	107	30	11	7	118	37	10	5	108	32
August	Statements not yet received.									
September										
October										
November										
December										

* One regular case was erroneously entered as a Special Appeal in last month's statement. The error now rectified.

MEMORANDUM of the Number of Appeals Depending, Received, and Decided by the Court of Nizamut Adawlut, in each Month, from January 1841.

MONTHS.	Depending.		Received during the Month.		Total.		Decided.		Depending at the end of the Month.	
	Trials referred under the Regulations.	Trials called for.	Trials called for.	Trials called for.	Trials called for.	Trials called for.	Trials called for.	Trials called for.	Trials called for.	Trials called for.
January	8	2	15	9	23	11	16	5	*7	6
February	7	6	19	16	26	22	14	10	†12	12
March	12	12	24	20	36	32	12	9	24	23
April	24	23	12	11	36	34	24	16	12	18
May	12	18	24	19	36	37	18	22	18	15
June	18	15	41	24	59	39	32	24	27	15
July	27	15	33	13	60	28	50	16	10	12
August	Statements not yet received.									
September										
October										
November										
December										

* One released.

† One released.

(True copies.)

(signed) *J. Thomason*, Secy Govt, N. W. P.

(C.) No. V.
Special Appeals.

Legis. Cons.
4 Oct. 1841.
No. 5.

From *Baboo Prossanno Comar Tagere*, Calcutta, to *T. H. Maddock*, Esq.
Secretary to the Government of India.

Sir,

ALTHOUGH the present address is submitted for consideration by a single individual, yet, in consequence of his being largely connected, directly or otherwise, with the landed interest in the permanently settled provinces, and may be presumed to be in a proportionate degree practically acquainted with the workings of the judicial administration in the mofussil, he most humbly trusts that the suggestions herein contained relative to certain provisions of a draft Act recently published, and intituled "An Act for amending the Rules of Special Appeals," will not be deemed unworthy of the attention of the Right hon. the Governor-general of India in Council in the Legislative Department.

The proposed amended law substantially provides that all special appeals from the decision passed in a regular appeal by a zillah judge, shall directly lie to the Sudder Dewany Adawlut, and that petitions for special appeals against the decision of the local subordinate courts (which had been hitherto finally adjudged by the district judges) shall in future be so far entertained by the zillah judge as to be either liable to rejection at the judge's own discretion, and his order thereon to be final, or he is to admit such special appeals; but in the latter case he is required to reduce the grounds for such admission to writing, in the form of a certificate, in the English and vernacular language, which, together with the decree on the case, is to be transmitted to the register of the Sudder Court.

The law further provides, that no special appeal shall be admitted in any case unless it shall appear to the presiding judge that the judgment appealed against is inconsistent with some established judicial precedents, or involved some question of law, usage, or practice, where reasonable doubt might be entertained. It also lays down certain other rules of practice, connected with the special appeal case, for the guidance of the Zillah and Sudder Court, empowering at the same time the latter authority on all such occasions, if it shall appear to it that the grounds for admission of appeal may have been incorrectly or incompletely certified by the zillah judge, or improperly admitted, either to return the proceeding for amendment, or reject the admission altogether, as the court may think fit to determine.

The laudable motive which actuated the Legislative Council in promulgating this modified law is so apparent as not to be misapprehended in regard to its anticipated advantages by the people in general, of its enactment being a desideratum in the administration of the zillah courts, wherein the local judges have the power, in cases of special appeals against the decision of the lower courts, to pass a final decision, notwithstanding that such decision was limited by the Regulations only to points of law, usage, and practice. Hence it frequently resulted, that however intricate and doubtful the point of law involved in a case, yet the decision of a zillah judge was final, and became binding on the district, at least until his successor had an opportunity to deliver his opinion on the said question, which, if it differed from that of his predecessor, on whatever grounds of relevancy, assumed the character of an amended law for the time being. Thus the superior authority (the Sudder Dewany Adawlut) seldom found itself called upon to revise or correct, if erroneous, such legal interpretations.

The system having been allowed to prevail for a series of years, one of its effects on the state of law in the provinces was observable in the circumstance, that in consequence of the judges of the various districts having individually entertained on questions of law opinions at variance with those of similar functionaries in other districts, without being subject to a common superior court for revision, those multifarious constructions of the law have continued, however contradictory, to possess in their respective districts all the force of precedents, and are adopted as rules for the guidance of the courts of lower jurisdiction.

The present modified law is evidently intended to obviate an evil, which, to use the mildest expression, may be characterised as highly objectionable in any well-regulated government, and the people in general will, no doubt, become gradually sensible of the advantages likely to accrue from this beneficial modi-

(C.) No. V.
Special Appeals.

fication. By its operation no tribunal but the Sudder Dewany Adawlut, wherein resides the paramount jurisdiction in the country, will be empowered to construct doubtful cases of law; and all subordinate courts being guided by its precedents, no judicial misrepresentation or general misconstruction of legal enactments is likely to occur in the administration of justice in the mofussil courts.

I beg to submit, that in the midst of those anticipations, which call forth the expression of unmixed gratitude, I am led to apprehend that the laudable intention of government may be liable to frustration, and the beneficial ends of the new modified law will eventually be defeated in its practical workings, unless the Supreme Government were disposed to effect a slight alteration in some of its provisions. I therefore presume to take the liberty to submit my humble observations for the consideration of the Right hon. the Governor-general in Council. Should my conclusions prove erroneous, I respectfully trust that I shall be pardoned, on the grounds of the motives by which I am actuated.

I beg with due deference to submit, that that part of the modified law which empowers a zillah judge to reject petitions for special appeal at his own discretion, making his order so rejecting the same final, is, to a certain extent, liable to misapplication. Here his admitted appeal may be expected to undergo a severe ordeal in the superior court, and in case of his being found to have committed errors in opinion, he will, in all likelihood, subject himself to the censure of the superior authority. Hence, in every instance of admission of appeal, it may be anticipated that he will hazard his opinion with special caution and hesitation, while, on the contrary, rejecting a petition, he does not become liable to incur the same degree of responsibility, and is not even called upon to specify his grounds in detail for such rejection. He, in the just exercise of his discretion, may barely state, on rejecting the petition, that he does not find sufficient grounds for admitting the appeal, making himself, in such instances, the sole and secret depository of his own motives and reasons for his negative; and the order on such petitions being legally final, he can never be called upon to account for his proceedings to any controlling authority, nor to the parties affected thereby, who are thus debarred from the benefit of ascertaining the merits and principle of his decision.

Man being a creature of circumstance, our mofussil judges are supposed to come within the scope of this general maxim. If there existed implicit and unlimited confidence in the unerring character of their moral rectitude, or in the infallibility of their judgment, this circumstance would have obviated the necessity of resorting for relief to the process of an expensive and dilatory appeal court, nor could any reasonable ground be adduced to justify any fear of misapplication of the law in question; but an Indian judge, independently of the peculiarity of his circumstances, is surrounded with amlahs, a description of officials justly considered the worst instruments in the administration of justice. Thus he will in all probability feel naturally disposed to reject applications for appeal, rather than hazard the merits of his opinion and legal reputation by admitting the same, which consequence will, as often as it may recur, practically defeat the laudable design of the ruling authority.

Under these circumstances I may be permitted to suggest that a provision be inserted in the said law, to the effect, that the zillah judge shall likewise be required, in the event of rejection or admission of a petition for appeal, to transmit a certificate in the English and vernacular language, to the register of the Sudder Court, who shall be enjoined to prepare in a condensed form the substance of each rejecting certificate, and collectively lay the same periodically before the English sitting of the Sudder judges. This modification, if the government should deem it proper to sanction, and adopt its provision, will not only operate as a wholesome check on the unlimited discretion of the zillah judges, but simultaneously afford to the controlling authority further and more ample means of forming its opinion of the qualification of subordinate judicial functionaries, and of correcting their errors of judgment for their future guidance.

I have, &c.

Calcutta,
9 August 1841.

(signed) *Prossanno Comar Tagere.*

(C.) No. V.
Special Appeals.

(No. 137.)

From *T. H. Maddock*, Esq. Secretary to the Government of India, to *J. C. C. Sutherland*, Esq. Secretary to the Indian Law Commission.

Legis. Cons. 4 Oct. 1841. No. 6.

Sir,

In continuation of my letter, No. 113, dated the 9th August last, I am directed, by the Right honourable the Governor-general in Council, to transmit the accompanying papers noted in the margin, regarding the proposed law for amending the rules of special appeals, and to request that the Law Commissioners will favour the Supreme Government with their opinion on the subject as speedily as may be convenient.

Legislative Dep.

Letter from Baboo Prosseno Comar Tagere, dated 9 Aug. 1841.
" from Secretary Government of Bengal, No. 1370, dated 7 September 1841, with Enclosure.
" from Secretary Government of North-western Provinces, No. 1716, dated 13 September, with Enclosures.

I have, &c.

Council Chamber,
4 October 1841.

(signed) *T. H. Maddock*,
Secretary to the Government of India.

Legis. Cons. 20 Dec. 1841. No. 22.

From the Indian Law Commissioners to the Right Hon. the Earl of *Auckland*, G.C.B. Governor-General of India, in Council.

We were about to report upon the subject of special appeals, with reference to the draft Act published on the 19th July last, and the papers transmitted to us with Mr. Secretary Maddock's letter, dated the 9th August, when we received the further papers transmitted to us by your Lordship's order on the 4th October.

Received 19 Aug. From Mr. Secretary Maddock, received 8th Oct.

2. In our Report, dated the 21st August 1840, upon the judicial courts in the presidency of Madras, we took occasion to express our opinion that "all special appeals should be heard and determined by the highest court;" and in the draft Act submitted with our further Report on this subject, dated the 10th July last, we introduced provisions to this effect. We at the same time recommended, that the judges of the Sudder Adawlut should be restrained from admitting special appeals upon any other grounds than those distinctly specified in Clause 1, Section 4, Regulation XV. of 1816, of the Madras Code, corresponding with Section 2, Regulation XXVI. of 1814, of the code of Bengal; that is to say, "unless the judgment shall appear to be inconsistent with some established judicial precedent, or with some Regulation in force, or with the Hindoo or Mahomedan law, in cases which are required to be decided by those laws, or with any other law or usage which may be applicable to the case, or unless the judgment shall involve some point of general interest or importance not before decided by the superior courts."

3. From the papers furnished to us with Mr. Secretary Maddock's letter of 9th August, we understood, as did your Lordship in Council, that both the Sudder Courts at Calcutta and Allahabad were likewise of opinion that special appeals should all be heard and determined by the chief court of appeal, and we learned that this opinion had been approved and adopted by the Supreme Government.

To government of Bengal, dated 19 Oct. 1840, p. 5.

4. From the papers last furnished to us we find, however, that the Sudder Court at Allahabad, although "they recognise the principle that special appeals should lie only to one, and that the highest tribunal;" yet recommend, that special appeals "from regular appeals tried by principal sudder ameens, from decisions of the sudder ameens and moonsifs," should be excepted and and left to be determined by the zillah judges. In this recommendation, we observe the Hon. the Lieutenant-governor of the North West Provinces does not concur, but prefers that such appeals should be cognizable only by the Court of Sudder Dewanny Adawlut, "as likely to conduce greatly to sound and uniform administration of the law."

Letter from the register, 9 July 1841, p. 15.

From Mr. Secretary Thomason, 13 September, p. 6.

5. It appears that the Allahabad Sudder Court propose to leave the determination of special appeals to the zillah judges, as above stated, because they apprehend that, by extending the grounds of special appeal as they recommend,

(C.) No. V.
Special Appeals.

the number of such appeals from decisions passed by the zillah judges themselves, in cases tried originally by the lower tribunals, will be enough to occupy fully the attention of the Sudder Court.

6. The question then that arises upon the suggestions of the Allahabad Judges is, whether it is advisable to depart from the principle, which is consented to by all who have expressed opinions on the subject; viz. that the final decision upon points of law should always be passed by the sudder courts, and that such decision should be passed judicially, and never, as heretofore, extrajudicially upon occasional references touching cases partially reported, in order to admit of a greater latitude in the grounds of special appeal, with a view to the correction of alleged erroneous decisions upon the merits of cases which have already undergone examination by two courts in succession, as well as erroneous decisions upon the law applicable to them.

To government of Bengal, 19 Oct. 1840, p. 10.

7. It is the opinion of your Lordship in Council, in concurrence with that of the Sudder Court at Calcutta, and that which we have expressed, and in agreement with the principle of the existing law of the presidencies of Bengal and Madras *, that a "special appeal should be admitted only for the trial of some special point or points of law, and that in the trial of the appeal only that particular point should be investigated and decided."

8. The Allahabad Sudder Court propose, "that a special appeal shall be admitted whenever on a perusal of the decree of the lower court there may appear strong probable ground, from whatever cause, to presume a failure of justice," "with exception to suits for personal property below 150 rupees." The Honourable the Lieut.-governor considers this too vague and indefinite, and recommends that a special appeal shall be admitted when the decree appears to be "incompatible with the recorded evidence."

9. We are not disposed to question that a system which provided for the interposition of the highest, and therefore presumably the best qualified tribunal, whenever there should be occasion to remedy injustice in individual cases, arising from the misunderstanding or perversion of evidence by subordinate judicatories, as well as to correct errors and remove doubts as to the law, would be more perfect than one which confined the attention of its superior judges to the latter object. But such perfection we cannot look to as attainable under present circumstances, and we are decidedly of opinion that it is of infinitely more importance to provide effectually for a correct and uniform interpretation and administration of the laws in which the whole community are concerned, than, leaving the provision for that object incomplete, to open a second appeal whenever a party dissatisfied with the decree on the first, is able plausibly to impugn its statement of the facts proved, or otherwise to allege a failure of justice: we say to open a second appeal, for it appears to us that it will be the same in effect, since if objections to the decree on the first appeal are admitted upon such grounds, we do not see how their relevancy and weight can be judged of without going into the case and examining the evidence with almost as much care and attention as would be sufficient for a decision upon an appeal.

10. We conceive that it is quite impossible from past experience under a law which limited the grounds of special appeal to points of law and usage, to form an estimate, likely to be even approximately correct, of the number of special appeals that would come before the courts if the grounds were enlarged as proposed, still less of the labour that would fall upon the judges by their being obliged, on the hearing of applications for special appeals upon the new grounds, to go into an examination of the proceedings and evidence to the extent that would be necessary. But we apprehend that the additional business would not be very much less than if a second appeal were allowed regularly as a matter of course.

11. Assuming then that it is not possible to combine the object which we deem secondary with that which we consider to be of the first importance, we think it clearly advisable to forego the former and give all attention to making our arrangements complete for the accomplishment of the latter. For this end we recommend, as the basis of a general law, that special appeals shall be heard

* By the Bombay Code, a special appeal is admissible "if strong probable grounds of grievance exist, from whatever cause." Reg. IV. of 1827, s. 99.

heard and determined only by the highest courts of the several presidencies, and that such appeals shall never be admitted but for the determination of some point of law, or of usage having the force of law, or of judicial practice.

12. These terms will include questions touching the rejection or admission of evidence, and the legal effect of the evidence admitted, and touching the settlement of the issues and the consequent shaping of the evidence; and we are of opinion that the irregular rejection or admission of evidence, mistakes as to the legal effect of evidence, and in the settlement of the issues, and consequent misdirection as to the evidence to be adduced, ought to be admitted as good grounds for a special appeal, as well as ignorance or misconstruction of the law or usage applicable to the case.

13. But in order that questions as to the legal effect of evidence may be fairly raised for the decision of the superior appellate court, it will be necessary that the courts below shall distinctly state in their decrees the words or facts proved to which a certain legal effect is attributed, and generally it will be a point of the first importance that the decrees shall be drawn up with the most careful attention to accuracy and precision.

14. To promote this object, we think it extremely desirable, that in cases decided by the zillah judges, the judgment and the grounds of it should be written in English, to be translated of course into the vernacular language. We are of opinion, that a rule to this effect would greatly conduce to exactness in the judgments, the reasoning, we conceive, would be more strict and pointed, and the conclusions more determinate, while there would be less room for dispute or cavil upon them for ambiguity of expression.

15. We understand that a manifest and striking improvement in these points ensued from the enactment of Regulation XV. of 1816 of the Madras Code, by which all the courts under English judges were directed to use the English language in their decrees.

16. It has always been our intention to recommend this measure for the presidencies of Bengal and Bombay also, and we think it proper to do so on this occasion with a view to facilitate the operation of the general law for special appeals which we now propose.

17. Adverting to the draft Act for the Bengal presidency, published on the 19th July, we observe that it provides for a second or special appeal to the Sudder Dewanny Adawlut, "from all decisions passed on regular appeals," if the judgment "be inconsistent with some established judicial precedent, or involve some question of law, usage, or practice, upon which there may exist reasonable doubts;" and directs that the judge admitting an application for a special appeal, shall reduce the point or points to be determined to writing, in the form of a certificate, and that the Court of Sudder Adawlut shall try and determine the point or points so certified, and no other point or part of the case.

Section 1.

Section 4.

Section 5.

Section 6.

18. But with reference to a practical objection raised by the Sudder Court at Calcutta, and with a view to prevent the chief courts of appeal from being overcharged with new business, recourse has been had to the expedient of vesting the zillah and the city judges with the power of determining upon the admission or rejection of applications for special appeals, in all cases in which the decisions complained of shall have been passed by subordinate judges, leaving only applications for special appeals from the decisions of zillah and city judges to be determined upon by a judge of the Sudder Court.

From register Sudder Dewanny Adawlut, Calcutta

19. We apprehend that there is no question, in any quarter, that the measure would be more perfect, if it provided for application for special appeals, in all cases, being determined only by a judge of the Sudder Court. This is our decided opinion; and we cannot but think that the proposed Act is likely, in a considerable degree, to fail in its purpose of bringing about uniformity of decision on points of law and usage, by leaving to the several zillah and city judges, in so many cases, to determine, independently and finally, what are settled points, and what are unsettled and disputable.

20. By the provision in question it appears to us that not a very great deal of labour will be saved to the sudder courts. It is stated that the number of petitions for special appeals disposed of in 1839 by the zillah judges subject to the Calcutta Court, was 1,238; the number of special appeals heard and determined by them was 748. It would not, we conceive, materially increase the labour of the court, which had to decide upon a special appeal, if it had to determine

(C.) No. V.
Special Appeals.

determine upon the admission of it in the first instance, as the judge who heard the application would probably proceed to pass the final decision himself, if it were within the competency of a single judge, or would join in the decision, and so the attention given to the case at first would not be lost. What would be entirely saved, is the labour of hearing the rejected petitions.

21. We submit the draft of an Act which has been prepared from the published draft, with the modifications necessary to adapt it to our views, and which we would recommend to be enacted for all the presidencies.

22. We are not insensible of the importance of the points adverted to in paragraphs 10 to 14 of the letter from the Allahabad Sudder Court, with reference to the superintendence and control of the zillah and subordinate judges in the performance of their judicial functions. But it is to be observed, that the province of the sudder courts as controlling boards is apart and distinct from their jurisdiction in appeal, and is by no means confined within the same limits; and where a judge finds no ground for a special appeal, he may, however, call for the proceedings of the lower courts when it appears to him that there has been a want of care and diligence, or that some irregularity has been committed in the investigation of the case, either on the original trial or on the appeal, and may proceed to bring the matter before the court, in order that the functionary whose conduct he considers censurable may be admonished, or that a report may be made to Government, according to the existing Regulations. The object of providing efficient means for the superintendence and control of the provincial judicatories generally, is one to which we shall give particular attention in framing our general scheme of judicature and procedure.

Reg. II. 1801, s. 7.
Reg. V. 1803, s. 38.
Madras Reg. VI. 1802, sec. 39.

23. We proceed to submit to your Lordship in Council the following suggestions, tending to uniformity of procedure, which have occurred to us on the review we have taken on this occasion of the rules prevailing in the several presidencies.

24. By the Regulations of the Bombay Code a second appeal is allowed of course in all cases decided on the first appeal by assistant judges of sudder stations*, within certain limitations, to the zillah judge, and beyond them to the Sudder Dewanny Adawlut; and in all cases decided on the first appeal by assistant judges at detached stations, when the judgment confirms a decree for more than 1,000 rupees, or reverses or alters one for more than 500 rupees, the appeal lying to the Sudder Dewanny Adawlut or to the zillah judge, as the amount involved in the suit may exceed or fall short of 5,000 rupees, and to the Sudder Dewanny Adawlut in all cases decided on the first appeal by zillah judges, when the judgment reverses that of an assistant judge or confirms it for an amount exceeding 5,000 rupees.

25. We would recommend that the present opportunity be taken to make the law of the Bombay presidency conformable in this respect to those of Bengal and Madras, permitting only a special appeal, as above recommended, to the Sudder Dewanny Adawlut in the cases in which a second appeal now lies either to that court or to the zillah court. We would, however, accompany this provision with another restraining the zillah judge from referring appeals from principal sudder ameens to assistant judges. It does not appear to us to be fitting to subject the decision of the judges vested with the highest original jurisdiction to the revision and final judgment of any but the highest provincial tribunal.

26. By the Bombay Code the only suits in which zillah judges now have original jurisdiction, are those which fall under Sections 22 and 43 of Regulation III. 1827, but they are authorised to refer such suits to their assistants, and in practice, it appears †, all are so referred. We are of opinion that it is unnecessary to continue this sole remainder of original jurisdiction to the zillah judges. We would recommend that it be transferred entirely to the senior assistant judge at both the sudder stations and at the detached stations.

27. In

* Within 2,000 rupees if the decree confirm that of the lower court; within 1,000 rupees if it reverse it.

N.B. By Sec. 2, Reg. VII. 1831, any appeal from a native commissioner, preferred to a zillah judge, may be referred to an assistant judge, and the original jurisdiction of the first class of native commissioners, now called principal sudder ameens, is unlimited.

† On reference to the returns of 1838, we find that of the few original suits decided by European judicial officers (84 altogether), none were decided by the zillah judges.

(C.) No. V.
Special Appeals.

27. In our plan for the abolition of the provincial courts in the Madras presidency, upon the principle of making no change not required for the accomplishment of the special object in view, we proposed that the original jurisdiction now exercised by those courts should be transferred with their other functions to the judges of the zillah courts. We had it in contemplation, however, to propose eventually, that these courts should be entirely relieved from original jurisdiction, and from the further consideration we have given to the subject on this occasion, we deem it advisable that it should be done immediately. We now recommend, therefore, that in the enactment to be made for the reform of the Madras courts, it be provided that all original suits now cognizable by the provincial courts be in future cognizable by the assistant judges and principal sudder ameens of the subordinate zillah courts, instead of the zillah judges.

28. By the Bengal Code zillah judges are still vested with original jurisdiction, and the principal sudder ameens and sudder ameens are competent only to try suits filed in the zillah courts, and referred to them by the zillah judges. But it is not intended that the zillah judges shall commonly exercise original jurisdiction, and when they retain any original suits on their own files, they are required to record their reasons for so doing specially.

Reg. V. 1831; sec. 24, Act XXV. 1837. Circular Order, 23 Feb. 1838. To the Sudder Dewanny Adawlut, Calcutta.

29. We would recommend that the intention of Government, expressed in paragraph 2d of Mr. Secretary M'Sween's letter, dated 26th August 1833, be now carried into effect by the enactment of the provisions proposed in Sections 41 and 42, Part II., of the Code of Regulations proposed by Mr. Millett, omitting the special limitation in Section 42, agreeably to Section 1, Act XXV. of 1837. By the proposed enactment the zillah judges will be relieved entirely from original jurisdiction, as we have recommended with respect to Madras and Bombay.

30. The general principle of our scheme for the Madras Courts vests the zillah judges with jurisdiction in regular appeals from the decrees of the assistant judges and principal sudder ameens of the subordinate zillah courts in all cases tried by them originally. But there is an objection to following it out entirely in the proposed transfer of the original jurisdiction of the provincial courts to those subordinate judges in suits above 5,000 rupees. With reference to the jurisdiction of the Privy Council, we would recommend, therefore, that in all cases in which the subject of action is of a value amounting to 10,000 rupees, and therefore liable to the jurisdiction of the Privy Council, the regular appeal shall be to the Sudder Adawlut, and to the zillah judge in all cases in which the value at issue is less than that sum.

31. By Act XXV. of 1837, in the territories subject to the Bengal presidency, appeals in original suits tried by the principal sudder ameens, when the value at issue exceeds 5,000 rupees, must be preferred to the Sudder Dewanny Adawlut. We are of opinion that the appeal should lie to the Sudder Dewanny Adawlut in cases in which the value amounts to 10,000 rupees, for the reason above stated. In suits for a less value we would give the jurisdiction on appeal to the zillah judge, and we recommend that the said Act be modified accordingly.

32. Upon the same principle we would recommend that in suits for a value amounting to 10,000 rupees, tried and decided by principal sudder ameens in the Bombay presidency, the regular appeal shall lie to the Sudder Dewanny Adawlut, and not to the zillah judge.

33. The measures above proposed will render the laws of all the presidencies uniform in some very important points, and put them as nearly on the footing on which we think they should stand permanently, as present circumstances seem to admit of, and so considerable a relief * will be afforded to the sudder courts of Calcutta and Allahabad, that their adoption, it may be hoped, will enable the judges as they stand at present to compass the hearing of all applications for special appeals, as well as the decision of all special appeals admitted.

34. We have followed the printed draft in treating of special appeals in regular

* The number of regular appeals preferred in 1829 to the Sudder Dewanny Adawlut at Calcutta, was 177, of which, by much the greater part, it may be assumed, would no longer lie to that court. The number of regular appeals received in the Allahabad Sudder Courts, in seven months, from January to July of the current year, was 65, being in the proportion of about 108 per annum.

(C.) No. V.
Special Appeals.

regular suits only on this occasion, but we observe that it has been the practice hitherto to admit special appeals likewise in miscellaneous cases. If the proposed rules are approved, we shall submit our opinion on the expediency of extending them to such cases.

35. The subject of this report has an intimate connexion with that of the Colleges of Justice, recommended in our report of the 31st October 1840. We shall report upon the establishment and organization of those institutions as soon as we have completed our report upon judicature in the presidencies. In the meantime we wish it to be understood that the recommendations we have now made respecting the Courts of Sudder Dewanny Adawlut will probably receive important modifications when we are engaged in devising rules for those more powerful tribunals, which will consist of the Judges of the Supreme Court and of the Sudder Dewanny Adawlut associated together.

We submit this our report for the consideration of your Lordship in Council.

(signed) *A. Amos.*
C. H. Cameron.
F. Millett.
D. Eliott.
H. Borradaile.

Indian Law Commission,
4 December 1841.

DRAFT (A).

IT is hereby enacted, that from and after a special appeal shall lie to the Courts of Sudder Dewanny Adawlut at Calcutta and Allahabad respectively, to the Court of Sudder Adawlut at Madras, and to the Court of Sudder Dewanny Adawlut at Bombay, from all decisions passed on regular appeals in the civil courts subordinate to them respectively, which shall appear to be inconsistent with some law, or usage having the force of law, or some practice of the courts, or shall involve some question of law, usage, or practice upon which there may be reasonable doubts.

2. And it is hereby enacted, that applications for special appeals shall not be admitted, unless they are presented to the proper court as aforesaid within the period limited for the presentation of regular appeals.

3. And it is hereby enacted, that every application for a special appeal shall be accompanied by copies of the several decrees previously passed on the case.

4. And it is hereby enacted, that every application for a special appeal duly presented to the proper court as aforesaid, shall be heard by a single judge of the court in the presence of the special appellant, or his vakeel, or agent, and it shall be competent to the judge at his discretion to call for and peruse any document forming a part of the record of the cause, and to summon the opposite party to answer the application.

5. And it is hereby enacted, that if it shall appear to the judge that a special appeal is admissible under this Act, he shall pass an order accordingly, and shall at the same time reduce the point or points to be determined to writing, in English, in the form of a certificate, which shall be translated into the vernacular language in use in the court, and the special appeal shall then be brought on the file of the court, to be heard and determined in due course.

6. And it is hereby enacted, that if it shall appear to the judge that a special appeal is not admissible under this Act, he shall reject the petition, and his order so rejecting a petition for a special appeal shall be final.

7. And it is hereby enacted, that in every case of special appeal admitted as aforesaid, the Court of Sudder Dewanny Adawlut shall determine the point or points, certified as above enacted, and no other point or part of the case whatever.

8. Provided, that when the special ground of appeal may have been incorrectly or incompletely certified, it shall be competent to the court to amend the certificate.

9. And it is hereby declared, that the existing laws and regulations of the presidencies of Bengal, Madras, and Bombay, relating to special appeals, shall continue

continue in force so far as they are not inconsistent with the provisions of this Act.

10. And it is hereby enacted, that nothing contained in this Act shall affect the hearing of second or special appeals which shall have been admitted and be pending in appeal at the time of the passing of this Act, and that all such second or special appeals shall be heard and decided in the same manner as if this Act had not passed.

(signed) *J. C. C. Sutherland*, Secretary.

Legis. Cons. 20 Dec. 1841. No. 23.

FORT WILLIAM, Legislative Department, the 20th December 1841.

THE following extract from the proceedings of the Right hon. the Governor-general of India in Council, in the Legislative Department, under date the 20th December 1841, is published for general information:—

Read a second time the draft of a proposed Act, dated the 19th of July 1841, and published in the Calcutta Gazette of the 21st of the same month, for amending the rules of special appeals.

Resolution.—The Right hon. the Governor-general in Council resolves that the following amended draft on the subject be re-published for general information:—

ACT No. —— of 1841.

An Act for Amending the Rules of Special Appeals.

1. It is hereby enacted, that from and after the a special appeal shall lie to the Courts of Sudder Dewanny Adawlut at Calcutta and Allahabad respectively, to the Court of Sudder Adawlut at Madras, and to the Court of Sudder Dewanny Adawlut at Bombay, from all decisions passed on regular appeals in the civil courts subordinate to them respectively, which shall appear to be inconsistent with some law, or usage having the force of law, or some practice of the courts, or shall involve some question of law, usage, or practice upon which there may be reasonable doubts.

2. And it is hereby enacted, that applications for special appeals shall not be admitted unless they are presented to the proper court as aforesaid within the period limited for the presentation of regular appeals.

3. And it is hereby enacted, that every application for a special appeal shall be accompanied by copies of the several decrees previously passed on the case.

4. And it is hereby enacted, that every application for a special appeal duly presented to the proper court as aforesaid, shall be heard by a single judge of the court in the presence of the special appellant, or his vakeel, or agent; and it shall be competent to the judge, at his discretion, to call for and peruse any document forming a part of the record of the cause, and to summon the opposite party to answer the application.

5. And it is hereby enacted, that if it shall appear to the judge that a special appeal is admissible under this Act, he shall pass an order accordingly, and shall at the same time reduce the point or points to be determined to writing, in English, in the form of a certificate, which shall be translated into the vernacular language in use in the court, and the special appeal shall then be brought on the file of the court, to be heard and determined in due course.

6. And it is hereby enacted, that if it shall appear to the judge that a special appeal is not admissible under this Act, he shall reject the petition, and his order so rejecting a petition for a special appeal shall be final.

7. And it is hereby enacted, that in every case of special appeal admitted as aforesaid, the Court of Sudder Dewanny Adawlut shall determine the point or points, certified as above enacted, and no other point or part of the case whatever.

8. Provided, that when the special ground of appeal may have been incorrectly or incompletely certified, it shall be competent to the court to amend the certificate.

9. And it is hereby declared, that the existing laws and regulations of the presidencies of Bengal, Madras, and Bombay, relating to special appeals, shall continue in force so far as they are not inconsistent with the provisions of this Act.

10. And

(C.) No. V.
Special Appeals.

10. And it is hereby enacted, that nothing contained in this Act shall affect the hearing of second or special appeals which shall have been admitted and be pending in appeal at the time of the passing of this Act, and that all such second or special appeals shall be heard and decided in the same manner as if this Act had not passed.

Ordered, that the said draft be reconsidered at the first meeting of the Legislative Council of India after the 20th day of March next.

(signed) *T. H. Maddock*,
Secy to the Govt of India.

From *T. H. Maddock*, Esq. Secretary to the Government of India.

Legis. Cons.
20 Dec. 1841.
No. 24.

To Chief Secretaries, Governments of Fort St. George (No. 194) and Bombay (No. 195), and Officiating Secretary, Government of North Western Provinces (No. 196).

Sir,
I am directed—

I have, &c.

Fort William,
20 December 1841.

(No. 157.)

To *F. J. Halliday*, Esq. Secretary to the Government of Bengal.

Sir,
With reference to your letter (No. 370) dated the 7th September last, with its enclosures, I am directed to transmit to you, for submission to the Right hon. the Governor of Bengal, the accompanying amended draft of a proposed Act for amending the rules of special appeals, this day read in Council, for any observation his Lordship may feel disposed to offer on its provisions in communication with the Judges of the Supreme Court.

The original enclosure received with your letter is herewith returned.

I have, &c.
(signed) *T. H. Maddock*,
Secy to the Govt of India.

(True copies.)

East India House,
6 April 1842.

T. L. PEACOCK,
Examiner of India Correspondence.

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